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Difference as the Ontological Foundation of Legal Hermeneutics: A Theory in the Light of Deleuze and Derrida*

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Abstract

Contemporary legal hermeneutics faces the challenge of bridging the gap between normative stability and interpretative plurality. This study investigates how Deleuze and Derrida's philosophy of *difference* might overcome the tension between Kelsenian legal certainty and Dworkinian hermeneutical pluralism by conceiving *difference* as the ontological foundation of interpretation. As per its theoretical framework, the present work relies on the concepts of *différance* (Derrida), intensive *difference* (Deleuze), normative framework (Kelsen), and chain novel (Dworkin), articulating them to demonstrate that *difference*, far from compromising normative coherence, strengthens it through an open and contextualized interpretation. Methodologically, it is based on qualitative research, bibliography, and deductive analysis. Structured on three axes—*difference* as a social phenomenon, the analysis of the philosophical conceptions of Deleuze and Derrida, and the application of these ideas to legal hermeneutics—the study concludes that *difference* is inherent to interpretative practice. By embracing the multiplicity of meanings and the mutability of contexts, hermeneutics proves to be more capable of interpreting legal texts in line with the complexity of the contemporary world, transforming itself into an interpretative technique sensitive to plurality and change.

Keywords

Difference, Hermeneutics, Law, Deleuze, Derrida

1. Introduction

Contemporary legal hermeneutics faces a key paradox: how can one reconcile sta-

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bility, which is vital for the legal system, with the inevitable myriad of interpretations emerging from social complexity? This paper relies on the presupposition that *difference*—understood as factual multiplicity (Deleuze) and linguistic instability (Derrida)—may not stand as an obstacle, but as an essential condition for legal interpretation in complex societies.

The intrinsic dynamism of the legal phenomenon is revealed through three interrelated dimensions: the variability of social facts that require constant regulation; the polysemy that characterizes normative texts, whose statements are susceptible to multiple interpretations; and the diversity of perspectives of legal practitioners, resulting from their training, experience, and institutional roles. This myriad of factors introduces an interpretative complexity that challenges traditional models of legal hermeneutics, which remain, to a large extent, guided by claims of univocity and neutrality in the interpretation of norms.

The central issue addressed in this paper is the tension between, on the one hand, the need for legal certainty (as highlighted by Kelsen through the concept of a normative framework) and, on the other hand, the inevitability of interpretative pluralism (as defended by Dworkin in the metaphor of the chain novel). How can these two seemingly antagonistic poles be reconciled?

Our hypothesis is that the philosophies of *difference* developed by Deleuze and Derrida offer conceptual tools for overcoming this apparent contradiction. While Deleuze allows us to understand *difference* as the driving force behind legal innovation, Derrida provides the tools to understand the constitutive instability of normative language. Together, these authors help to construct a legal hermeneutics that is both sensitive to social complexity and committed to the fundamental values of the democratic rule of law.

From a methodological standpoint, this research adopts a qualitative approach structured around three main axes: a conceptual analysis of the works of Gilles Deleuze and Jacques Derrida; a critical examination of the legal theories of Hans Kelsen and Ronald Dworkin in light of the aforementioned philosophical references; and the study of paradigmatic cases in Brazilian jurisprudence, with emphasis on ADI No. 4277/DF, which deals with the recognition of same-sex unions. The method employed combines bibliographic research and jurisprudential analysis, promoting an articulation between the philosophy of law and judicial practice.

The relevance of the research is expressed on three distinct levels: on a theoretical level, by contributing to the development of a legal hermeneutics capable of responding to the complexity of contemporary societies; on a practical level, by offering interpretative elements that assist in the reasoning behind judicial decisions in cases of high normative indeterminacy; and on a political level, by promoting a more inclusive conception of law that is attentive to plurality and social *differences*.

The structure of the article is as follows: in chapter 2, we examine the multiple dimensions of the concept of *difference* in philosophy; in chapter 3, we analyze

Deleuze's specific contribution to legal thought; in chapter 4, we explore the implications of Derridian *différance* for normative interpretation; and in chapter 5, we apply these references to hermeneutic practice, showing how *difference* operates both in theory and in judicial decision-making.

In the end, we hope to demonstrate that *difference* is not a problem to be overcome by legal hermeneutics, but rather the very condition of its possibility in a world marked by complexity and pluralism. Far from threatening legal certainty, the recognition of *difference* as a constitutive element of interpretation can strengthen the legitimacy of the legal system in the face of the demands of a democratic and pluralistic society.

2. Multiple *Differences*: Exploring Their Conceptual Dimensions

The concept of *difference* plays a fundamental role in philosophy, and its interpretation varies according to the context and philosophical school in question. *Difference*, seen as a phenomenon—an event, occurrence, or result of observation that can be perceived by the human senses or detected by the use of techniques in the natural world, where the occurrence of *differences* can vary in scale—is not limited to the simple diversity of things that do not resemble each other. It also represents the factor that establishes the individuality and distinction between these things. In other words, *difference* lies not only in the multiplicity of elements, but in the characteristics that give each of them uniqueness and distinction from the others.

Difference is anchored in the human condition—in the fundamental nature, experience, and existence of human beings in the world—of thinking and perceiving in others and in things characteristics that are both the same and different, and of establishing these properties as meaningful or diluted in intentionality, in the sense they give to *differences*. These *differences* are presented or reported by language, a means of communication and definition of the composition of *differences*. But even language incorporates *difference*, because as language is performed with words and concepts, these can acquire meanings different from those originally intended.

Thus, *difference* is not a condition of nature, but rather a human possibility, established by the subject in their cognition that observes the world, defines it, and appropriates it through language. *Difference* is the power of Being to relate signs and at the same time categorize them as needed. This ability to deal with *difference* is what enables the construction of knowledge, communication between human beings, and cultural evolution. Through differentiation, people are able not only to identify and describe the peculiarities of the world around them, but also to classify and organize this information according to categories and patterns that make sense to them.

Difference is not a passive feature of human cognition; it also allows humans to approach new experiences, enrich their understanding of the world, and develop

solutions to the challenges they encounter. Thus, *difference* is not only a property of human thought, but a dynamic force that shapes our relationship with the world and our development as individuals and as a society.

The ontological conception presented is based on the notion that Being manifests itself equally in all *differences*, without conferring ontological privilege on any specific form of existence. In this sense, all differential forms—whether entities, modes of being, or relationships—participate equally in Being, regardless of their intrinsic characteristics or the degree of power they express, understood as the capacity to act, transform, or affect other entities. Each *difference*, in turn, tends toward the full realization of its possibilities, seeking to reach the maximum limit of its potency from the contingent encounters that constitute it, thus moving away from any teleological determination or fixed destiny.

This dynamic implies that the limit of potency is specific to each *difference*, configuring itself as a singular expression of its existence at a given moment. However, what equalizes all *differences* before Being is precisely the continuous movement of overcoming these limits, indicating that it is not the current state that defines them, but the process of becoming that drives them. To exceed its current limit, *difference* must transform itself, thus requiring an ontological metamorphosis; that is, a modification of its own nature. This process of radical transformation is a condition for reaching a new level of power (Fornazari, 2006).

The notion of intensive *difference*, as outlined by Deleuze, refers not only to quantitative variations but to profound qualitative changes that emerge when an entity is taken to the extreme of its power. Intensive *difference* is thus defined by the force of metamorphosis, by the ability to affirm excess and, with that, to destabilize fixed identities. It is a *difference* that is not content with its current state but which continually reinvents itself, refusing any stabilization of identity (Fornazari, 2006).

This process culminates in the disintegration of identity, understood as the dissolution of all fixed and definitive forms of being. *Difference*, in this context, is not something that simply is, but something that becomes—that is in constant motion and transformation (Fornazari, 2006).

Such propositions are part of the philosophical context outlined by authors such as Deleuze, for whom *difference* constitutes the ontological foundation of reality, prioritizing becoming and the power to affect and be affected; Spinoza, whose conception of conatus expresses the effort of each being to persevere and expand its power through encounters; and Nietzsche, who, according to Fornazari (2006), articulates the will to power as an existential impulse aimed at overcoming one's own limits. In this horizon, *difference* is conceived as an affirmative force of transformation, rupture, and reinvention, constituting itself as the organizing principle of an ontology of multiplicity and power.

The idea of *difference*, or the philosophy of *difference*, does not present unanimous conceptions; understandings of it range from the ontology of Being itself to political relations and forms of interpretation. The idea of *difference* underpinned

philosophical thinking on the analysis of identity, equality, and otherness and allowed this discussion to reach the scope of anthropological and cultural thinking and, above all, Law.

Plato, one of the philosophers in the history of Western philosophy, addressed the notion of *difference* in several of his dialogues. In particular, his work Sophist provides an in-depth exploration of the issue. His reflection on *difference* is intrinsically linked to otherness, as opposed to the concept of identity. In the dialogue, Plato had to face challenges arising from the question of non-being, which he inherited from the Sophists (Platão, 2011). In addition, he later had to reconsider aporias related to the very concept of being:

> [...] Being is multiple, because there are many things that are, and Non-Being is an indefinite multitude, for indefinite is the number of things that are not each of the things that are. That is why Being is not, even though, being one, it imposes a limit on other things [...] In the Being/Non-Being relationship (257b, 258e-259a), Plato confirms his rejection of the monism of On Nature (B8.6a, passim), denying not only the Eleatic conception of Being as numerical unity, through the postulation of a plurality of Forms integrated into one another, but also forcing the admission that Non-Being is constituted by an infinity of alternatives to Being, which participate in it to the extent that they deny it (256e-257a, 257d-258b) (Santos, 2011: pp. 28, 109-110).

Plato rejects the idea that Being is merely a numerical unity, as proposed by the Eleatic philosophers, who argued that Being was unique and immutable. Instead, he defends the existence of a plurality of forms (universal ideas or concepts) that are interconnected and related to each other. These forms are the basis of everything that exists in the visible world.

Aristotle, in his work Metafísica (Metaphysics), outlined an initial understanding of *difference*: things can only differ when they share something in common, such as color, configuration, shape, among other aspects. These distinctions establish that things differ in genus when they share the same matter but cannot transform into one another, which means that they belong to different categories (Abbagnano, 2007). On the other hand, things differ in species when they belong to the same genus; that is, they have characteristics in common within a broader category.

Therefore, for Aristotle, the specific *difference* is one that introduces a significant distinction in the definition of species within a genus that remains unchanged for both species. It meets the selection criterion for the *difference* to be incorporated into the general concept. In the material context, *differences* between individuals are not reflected in the concept because these *differences* are always accidental and external (such as the *difference* between bronze and wood), not generating an intrinsic contradiction between them.

> Since things that differ from each other can differ to a greater or lesser degree, there must be a maximum *difference*, which I call contrariety. That contrari-

> ety is the maximum *difference* is evident by intuition. In fact, things that are different in kind do not admit any transition between them, but are distant from each other and incomparable. But things that differ in species are generated from opposites taken as extremes. Now, the distance between extremes, and therefore between opposites, is maximum. But the maximum in each genus is also perfect: maximum, in effect, is that which cannot be surpassed, and perfect is that beyond which no other can be found. And the perfect *difference* is that which has reached its end, just as things are generally perfect when they reach their end (Aristóteles, 2002: p. 451).

Aristotle discusses the idea that, among different things, there is a maximum *difference* (contradiction) that occurs when comparing opposite extremes within a category. This maximum *difference* is considered perfect because it has reached its maximum limit. The incomparability between different categories is emphasized, highlighting that maximum *differences* occur within the same categories.

Aristotle points out that things can be considered different for various reasons, including their category, similarity, opposition, or diversity in their composition, and this distinction is not limited to quantity alone, but also to other criteria and contexts (Aristóteles, 2002). Things can be categorized as different in various ways. Some of them, although distinct in their characteristics, can be considered identical in a certain context. This is not due to equality in quantity, but rather to their similarity in terms of species, their similarity in genus, or their analogical relationship. Still, other things are called different because they belong to different genera, are opposed to each other, or present diversity in their substantial composition (Aristóteles, 2002).

Furthermore, moral and ethical philosophy explores *difference* as a contrast between good and evil, right and wrong, or fair and unfair. Stuart Mill establishes the *difference* between the four methods of experimental research. The method expressed by the following rule stands out: When two cases share all circumstances except for one that is present in only one of them, that distinct circumstance is seen as the effect, the cause, or a fundamental part of the cause of the phenomenon (Abbagnano, 2007). This method suggests that when comparing two similar cases, except for a single *difference*, the observed *difference* can be identified as the cause or part of the cause of the phenomenon under study. This helps to establish causal relationships in experimental research.

On another note, the ontological *difference* is an idea presented by Martin Heidegger. It refers to the fundamental distinction between being (da-sein) and entities: "the *difference* that Heidegger intends to consider is more fundamental; it is one that existed in a time prior to metaphysics and that appears in the early Greek thinkers when they sought to understand what being was" (Ferronatto, 2010: p. 85). Being is that which exists independently of any particular entity, while entities are objects, human beings, things, etc. This ontological *difference* plays a central role in Heidegger's analysis of human existence and understanding of being.

> Not being hidden from being always means the truth of being, whether real or not. Reciprocally, in the hidden non-being of an entity, the truth of its being is always implicit. Ontic truth and ontological truth refer, respectively, to the entity in its being and to the being of the entity. They interpenetrate each other essentially from their relationship with the *difference* (Unterscheid) between being and entities (ontologische Differenz). The essence of truth—which therefore necessarily bifurcates into ontic and ontological—is only possible together with the opening of this *difference* (Heidegger, 2000: p. 126).[1]

The fundamental *difference* lies in the distinction between what manifests itself in a specific context (horizon) and the context itself, which acts as an opening allowing the appearance of Being and entity. There is, therefore, a *difference* between Being and entity, revealed by an ontic and ontological relationship—ontic: refers to the entity in its state of existence; while ontological: refers to the Being of the entity itself (Esperón, 2016). For Heidegger, in the field of historical interpretation or historiographical exegesis, the dimension of ontological *difference* is often neglected or forgotten, due to the intention to reduce the entities of the world to their objectivity and concepts. Thus, it is only admissible to conceive of Being and entity in terms of the opening offered by *difference*.

However, this discussion raises a fundamental question in philosophy: why is there a *difference* between what is perceived and the context in which it is perceived? Heidegger proposes a reassessment of this problem, seeking to break with the traditional molds of metaphysics, which used to be understood as ontotheology, that is, the exploration of questions and answers about Being based on God.

> The question of being, in the context of ontological *difference*, arises from the confrontation with the metaphysical tradition. According to Heidegger, what gives rise to metaphysical thinking is precisely the forgetting of the *difference* between "entity" and "being." Metaphysics grasps the *difference* between entity and being as it interprets being as an aspect of the entity taken in its representation. However, this *difference* is not a *difference*, since being apprehended in this way becomes a simple abstraction of its essential features; that is, being thus interpreted does not cease to be the entity itself focused on from a certain perspective. It is in this sense that Heidegger's criticism is directed, since metaphysics tends to represent being itself as an entity and, at times, even takes it as a supreme entity (Ferronatto, 2010: p. 85).

The notion of *difference* is a multifaceted concept that is fundamental to understanding the world, approached in various ways according to philosophical

[1]In the original text: El no ser escondido del ser significa siempre la verdad del ser del ente, sea este real o no. Recíprocamente, en el no ser escondido de un ente está siempre implícita la verdad de su ser. La verdad óntica y la verdad ontológica se refieren, respectivamente, al ente en su ser y al ser del ente. Ellas se compenetran esencialmente en base a su relación con la diferencia (Unterscheid) entre el ser y el ente (ontologische Differenz). La esencia de la verdad -que por eso se bifurca necesariamente en óntica y ontológica-, sólo es posible, junto al abrirse de esta diferencia.

currents and contexts. *Difference* is not limited to the diversity of dissimilar things, but also involves the quality that makes each element unique and distinct from others. It is rooted in the human capacity to perceive and attribute meaning to the equal and diverse characteristics in others and in things, expressing itself through language, which in turn also incorporates *difference*.

This reinforces that *difference* is not a characteristic of nature, but rather a human possibility established by the subject who observes the world and defines it through language. *Difference* is also linked to social issues. In this situation, it presents itself as a transformative force in society, seeking to overcome previously imposed limits, affirming what is excessive in itself, and shattering pre-established identities.

It is not surprising that various social groups have begun to view the idea of *difference* as an intrinsic part of their existence, while simultaneously seeking understanding and space due to their uniqueness. The political struggle, whether by blacks, women, or any other group marginalized for their *difference*, in their ability to act as agents of change in society, grew considerably throughout the 20th century, as follows:

> Starting in the second half of the 1970s, we found ourselves immersed in an entirely new cultural and ideological atmosphere, in which there seemed to be a rapidly and disturbingly widespread awareness that we humans are indeed different [...], but we are also different by right. It is the so-called "right to be different," the right to cultural *difference*, the right to be, while being different. The right to be different! It seems that we no longer want equality. Or rather, we want it less. What motivates us much more in our conduct, in our expectations for the future, and in our plans for a shared life is the right to be personally and collectively different from one another (Pierucci, 1999: p. 7).

These groups, motivated by the pursuit of equality and justice, have played a role in transforming social structures and promoting a more inclusive society. Their struggles influence significant changes in laws, public policies, and societal attitudes. In this regard, *difference* as a condition of inequality and imbalance tends to be mitigated by the society that suffers from the condition, leading to better access and conditions.

Pierucci (1999) argues that the defense of *difference* is not necessarily a defense of equality and that it is often used to justify hierarchies and inequalities. He also discusses how the right appropriates this argument to attack left-wing movements. The right to *difference* is a concept that has been used by left-wing social movements to defend the appreciation of and respect for cultural, ethnic, gender, and other forms of diversity.

In this context, *difference* becomes linked to cultural relativism and to the right to be different, arguing that cultures have value systems and moral norms that differ from one another, thus emphasizing the importance of recognizing and respecting them. In the political and social sphere, *difference* is often associated with

diversity, whether in terms of cultural, ethnic, gender, sexual, or other types of diversity.

The notion of *difference* throughout philosophical thought and social transposition transcends the limits of superficial diversity and deepens the complexities of the qualities that make each element unique and distinct. It is an essential facet of human experience, rooted in the ability to perceive and communicate *differences* through language. *Difference* is not intrinsic to nature, but rather a human construct that challenges predefined boundaries and identities, and it can be shaped according to criteria in different temporal and spatial contexts. The notion of *difference*, like that of equality, is flexible and subject to distensions or restrictions of meaning.

Difference plays a crucial role in the social and political sphere, fueling movements that seek to recognize and celebrate diversity in all its forms. Ultimately, understanding *difference* is fundamental not only to philosophy, but also to addressing contemporary issues related to equality, identity, and harmonious coexistence in a diverse society. These are impacts that can be verified within a hermeneutic understanding of the term. Deleuze and Derrida promote an updated condition within contemporary thought on the subject, respectively verifying the condition of *difference* in society and in grammar.

3. Deleuze and the *Difference* of Human Existence

Gilles Deleuze, a 20th-century French philosopher, developed a thesis on the philosophy of *difference* that breaks with traditional notions of identity and opposition. Deleuze proposed a philosophy based on *difference*, multiplicity, and constant variation (called repetition). According to his perspective, reality is defined by its heterogeneity and a state of perpetual change. By transposing this concept to the field of legal hermeneutics, it can be argued that the multiplicity of viable interpretations stems from the very essence of law as a constantly evolving system.

Deleuze conceives language not as a neutral element of communication, but as a system comprised of slogans that exert a normative and coercive function on subjects. From this perspective, subjectivity is not understood as a static entity, but as the result of a continuous process of subjectivation that constitutes itself precisely in resistance to this disciplining power of language. The Deleuzian subject is therefore characterized as the permanent actualization of a differential virtuality, configuring itself in an incessant process of becoming, in which identity, meaning, and discursive position are dynamically reconfigured in response to the forces that traverse the social and linguistic field (Ruthrof, 2023).

In Difference and Repetition, Deleuze challenges traditional concepts of identity as exemplified above and seeks to understand reality not as something secondary to identity, but as what constitutes and makes each thing unique and singular. Difference, as a condition of the subject, allows one to know the world and understand it in one's own way; it also generates new possibilities, leading people to change and develop.

> Being is equally present in *differences*: each *difference* participates equally in being, because regardless of its amount of power, each *difference* goes to the extreme of what it can, in the face of the encounters that chance imposes on it. The limit of power is specific to each *difference*, but the quest to exceed the limit is what defines the equal presence of being in each of them. Thus, there is a maximum specific to each *difference*, beyond which it can only exceed its power: to exceed its limit, the *difference* must transform itself. Intensive *difference* is ultimately defined by this force of metamorphosis through which it affirms what is excessive in itself in order to return as *difference*, expelling the deficiency of the condition and the equality of the agent (Fornazari, 2006: p. 29).

It is not a matter of expressing Being in a single way, but rather of expressing it in a unique way in relation to all its individual and collective *differences* or intrinsic modalities. "In fact, the essential thing in univocity is not that Being is expressed in a single sense. It is that it is expressed in a single sense of all its individual *differences* or intrinsic modalities. Being is the same for all these modalities, but these modalities are not the same" (Deleuze, 2018: p. 62).

It does not imply, therefore, that Being is limited to a single meaning or interpretation, but rather that, regardless of the multiple forms it may take, its uniqueness and continuity are maintained in all these variations of *difference*; and it reinterprets repetition as a creative process and not simply as the reproduction of something identical (Deleuze, 2018). These concepts have had a significant impact on a wide variety of areas, spanning philosophy, art, psychology, and social theory. They remain topics of ongoing debate and exploration by philosophers and scholars even today (Deleuze, 2018).

Being is consistent and uniform in all its manifestations or individual *differences*, but these individual manifestations are not all the same as each other. Being is the fundamental essence that permeates all things, but things can take on different forms or intrinsic modalities (Deleuze, 2018). Even though these modalities are diverse, Being remains constant and unchanging.

He argues that the world is composed of multiple phenomena and that *difference* is the fundamental principle that drives reality. Deleuze proposed the concept of ontological *difference*, which is the idea that reality is constituted by a diversity of elements that cannot be reduced to a single essence. The composition of *difference* in Deleuze lies in the condition of social and individual *differences*, which occur in the factual field, where, at the same time, it relates to identity.

> Deleuze explains the emergence of *difference* as that which transcends raw data. For, as he states, for example, in his monograph dedicated to empiricism, it was Hume who taught us that it is not data that produces *difference*. The sun rises repeatedly; however, when this repetition becomes the expectation of a future dawn, something new springs forth in the spirit, and not in the thing itself (Ramos, 2011: p. 84).

The idea that the *difference* lies not in the simple repetition of events, but rather in the way our mind interprets and expects something new, even in seemingly repetitive situations. The sun rises every day, but for us, the expectation of the future dawn brings a sense of novelty, a *difference*, not in the thing itself, but in the subjective experience. Deleuze highlights the importance of subjectivity and interpretation in the creation of *difference* (Deleuze, 2018). *Difference* is not simply an attribute of objective events, but something that emerges from the interaction between these events and our mind, which interprets them and gives them meaning. Therefore, for Deleuze (2018), *difference* is a subjective construction that goes beyond simple raw data and is fundamental to our understanding of the world and reality.

> But the *difference* is that by which data is given. It is that by which data is given as diverse. The *difference* is not a phenomenon, but the number closest to the phenomenon. Therefore, it is true that God makes the world by calculating, but his calculations are never exact, and it is precisely this inaccuracy in the result, this irreducible inequality, that forms the condition of the world. The world "makes itself" while God calculates; there would be no world if the calculation were exact. The world is always assimilable to a "remainder," and the real in the world can only be thought of in terms of fractional or even incommensurable numbers. Every phenomenon refers to an inequality that conditions it. All diversity and all change refer to a *difference* that is their sufficient reason. Everything that passes and appears is correlative to orders of *differences*: of level, temperature, pressure, tension, potential, *difference* in intensity (Deleuze, 2018: p. 297).

Difference is not a mere phenomenon but something fundamental that makes reality varied and complex. This means that it plays an essential role in the way the subject perceives the world. On this point, Deleuze (2018) describes in the above excerpt that the world can always be assimilated based on the notions of diversity and similarity, suggesting that there is always an element of unpredictability and *difference* that cannot be fully explained by divine calculations or any deterministic system. The world is therefore characterized by a kind of residue of uncertainty that contributes to its uniqueness, a bet that in the equality conceived in the same genre or phenomenon, there are distinctions of greater or lesser degree that impact to the point that what would be homogeneous can be identified as variations (species), such as breaks in repetition.

Based on an interpretive and hermeneutic logic, it is suggested that interpretations are not fixed or universal but may vary depending on individual perspectives and contextual *differences*. This means that different interpretations of a text, a law, or a phenomenon are possible and can be equally valid from different points of view, moments, and contexts. From another perspective, a circumstance that repeats itself, even if it is constant and continuous in the world and in society, is subject to interpretive changes at any time. This is because the subject, endowed

with the ability to attribute meaning and significance to their environment, possesses diverse and similar qualities that influence how they understand phenomena.

Take, for example, Dworkin's (2014) legal theory of the chain novel. The chain novel, an interpretive process, can be compared to a collective novel, in which several authors collaborate on its creation. Each author (judge) is responsible for writing a distinct part of the novel and must continue the narrative from the point where the previous author left off. Each part written by a decision-maker is associated with the integrity of the homogeneous context of the law but is expressed by judges from a wide range of political, ideological, and philosophical backgrounds.

The metaphor describes how judicial decisions are interconnected over time, in which judges "must create together, as far as possible, a single unified novel that is of the highest possible quality" (Dworkin, 2014: p. 276). Instead of treating each case individually, the idea is that judges should consider previous decisions, creating a novel or continuous narrative of jurisprudence. In this context of a chain novel, previous judicial decisions play the role of chapters that contribute to the construction of a cohesive and constantly evolving jurisprudential narrative. This means that there is an opportunity both to maintain the existing interpretation (repetition) and to promote a paradigmatic change in hermeneutics (*difference*).

Based on the idea that each case is unique and judicial decisions cannot be mere repetitions of previous decisions, each legal situation is an expression of *difference*, requiring careful and unique analysis. The notion that *difference* is at the root of everything can be used to justify changes in jurisprudence over time, as society evolves and values change. Judicial decisions can be seen as responses to contemporary *differences* and challenges.

It promotes consistency and quality in judicial decisions, ensuring that the law is applied fairly and effectively over time. When a judge makes a decision, he or she must consider previous decisions and attempt to harmonize them to create a unified whole that represents the best interpretation of the law at the time. This involves considering the development of society, moral standards, and current legal demands.

In other words, although the concept of the chain novel in jurisprudence offers cohesion and the opportunity to maintain the continuity of the law's meaning, this does not prevent a judge—even if it is another judge—from changing the interpretation of the law when there are justifications. This change does not mean interrupting the development of the narrative but rather leading it in a different direction. On the other hand, when a *difference* in legal phenomena is observed, it is possible to maintain the meaning and continuity of the chain novel as follows.

Just as Deleuze's (2018) philosophy of *difference* emphasizes flexibility and adaptability in understanding reality, the chain novel in jurisprudence implies that judges are not rigidly bound by past decisions. They have the ability to interpret the law in a way that accommodates changes in society and morality, reflect-

ing flexibility in the interpretation of norms.

The chain novel in jurisprudence recognizes that society is dynamic and diverse, and judicial decisions need to evolve to accommodate these *differences*. Jurisprudence considers the variety of situations and contexts when creating this legal narrative. Both the philosophy of *difference* and the concept of the chain novel emphasize the promotion of justice and consideration of prevailing values. Judges are encouraged to adapt jurisprudence to reflect contemporary values and the need for justice as society changes.

Therefore, a hermeneutics achieved in Deleuzian *difference* perceives the *difference* of Being—the one who interprets the norms—as relevant and does not disregard it. It does not ignore this subjective and idiosyncratic dimension but values it as a fundamental element in the construction and evolution of the interpretation of law. Deleuze's *difference*-based approach highlights the richness and complexity of interpretations, for however identical Being may be, its particularities and *differences* are extracted and revealed in the result of interpretation, promoting a more sensitive and adaptable understanding of law, capable of reflecting the nuances and changes in society.

The difference, as conceptualized by Deleuze, constitutes the ontological foundation that enables and legitimizes the chain of reasoning used by Dworkin to describe legal interpretation. This philosophical notion transcends quantitative variation to assert itself as a qualitative transformation and force of becoming, offering the condition of possibility for the narrative of law to be understood as an evolutionary and creative process, rather than as a static repetition of pre-established meanings. The ontology of difference thus provides the theoretical basis that justifies the continuous reinvention of normative meaning in the face of new intensive social realities, which demand recognition and integration into the legal system. It shows that difference is not a problem for law, but its condition of possibility in a complex society.

Thus, each judicial decision represents a new chapter in a legal narrative that is constantly evolving. This perspective legitimizes the fact that hermeneutic evolution does not correspond to arbitrary discontinuity, but rather to a creative response—in Dworkinian terms—that is consistent with the emerging demands of social life, which act as transformative forces on the system. Consequently, it is possible to harmonize the pole of interpretive plurality—which embraces the multiplicity of meanings and contextual mutability—with the necessary continuity of the legal system.

The apparent tension between legal certainty, symbolized by the norm, and the creative openness of the chain novel is thus resolved dialectically. The identity limits of the system are established, ensuring predictability and consistency, while the Deleuzian logic of difference, operating within the norm, allows for the adaptation and historical evolution of law.

4. Derrida: Multiple Interpretations of Norms in Difference

In Deleuze's philosophy, *difference* is evident in Being, and as it interacts with the

world, it exists in (and with) *difference*; Being also becomes different. On another point, in Derrida's thinking, *difference* manifests itself mainly in the realm of language, where the multiplicity of meanings and significances arises when interpreting and using words, phrases, or terms. Jacques Derrida was a French philosopher known for his work on the philosophy of *difference* and deconstruction, both of which emphasize the instability and contingency of meanings in language and culture.

To explore the philosophical aspects of his thesis on *difference*, Derrida (1991) employs the neologism *différance*[2]. It is a fundamental term in the philosopher's philosophy of deconstruction and *difference*. This term is a linguistic creation by Derrida that combines the French words différer (to differ) and la différence (the *difference*). *Différance* encapsulates the idea that in language and thought, words and concepts never have a fixed and stable meaning, but depend on their relationships with other terms and subjects, as well as on a continuous process of differentiation that occurs in human language (Schmidt, 2014). Derrida's *difference* breaks with the totalizing and structuralist notion employed by philosophy, especially Saussurean philosophy:

> The subsequent realization that Derrida's *différance* inaugurates a new interpretative key to the theme that runs pari passu with the themes of exteriority and otherness in Levinas is not common knowledge. The result is well known: "*difference*," a misunderstood and mistreated term, the proclaimed banner of one or many philosophical styles, no longer says to contemporaries what it seemed to suggest originally, before its proclamation (Souza, 2007: p. 111).

Derrida argues that *différance* is an underlying condition that makes the appearance of things possible, but is itself invisible or inaudible (Schmidt, 2014). It operates behind the scenes, influencing language and thought, but cannot be grasped directly. It is emphasized that *difference* is not a present entity; it is not something that is there, and thus it escapes the logical structure that revolves around presence and absence in the question of existence. Here, the focus is not on anything related to the dichotomy between being and non-being.

For him, language is intrinsically marked by *difference*, and this *difference* is fundamental to the production of meaning. "Derrida asserts that there is no truth or meaning, only many different perspectives and different interpretations. These perspectives do not reveal an underlying meaning and are only the play of *difference*" (Schmidt, 2014: p. 226). *Difference* highlights that the meanings of words

[2]Derrida used différance to question the philosophical tradition based on the opposition between presence/absence and being/non-being. He argued that différance destabilizes these binary oppositions and highlights the complexity and fluidity of language and meaning. Therefore, différance is a key concept in Derrida's deconstruction, a critical approach that examines how traditional oppositions in philosophy and language are constructed and deconstructed. "It has already been necessary to emphasize that différance is not, does not exist, is not a present entity (on), whatever it may be; and we will be led to emphasize what it is not, that is, everything; and that, therefore, it has neither existence nor essence" (Derrida, 1991, p. 37).

are not fixed or stable but are constantly changing due to the *difference* that exists between words and concepts. Disagreements about values arise from the *difference* in the attribution of meanings and the interpretation of practices.

Thus, Derrida's *difference* expresses the condition of interpretation that can lead to ambiguities or polysemy in communication and the organization of ideas. In law, this situation is not uncommon or rare; on the contrary, interpreters of the law on a global scale are always faced with the need to assess the context, meaning, and scope of the norm. Therefore, "[...] law (droit) is essentially deconstructible, either because it is founded on and built upon interpretable and transformable textual strata (and this is the history of law (droit), its possible and necessary transformation, sometimes for the better) [...]"[3] (Derrida, 1990: p. 99).

The *difference* in meaning is not something that makes the norm good or bad; it is in its nature, since technical or colloquial language offers the possibility of manipulating words, broadening or narrowing their meaning, or innovating their definition. In the absence of a transcendental (metaphysical, absolute, or totalizing) meaning, a text has no intrinsic meaning or truth; its understanding and validity are instead linked to its relationship with other texts (Schmidt, 2014). Thus, the word is not a manifestly independent concept in itself, nor does it claim a prior essence that defines it. To understand its meaning, other words, phrases, or terms are needed, which also depend on other signs and contexts, in a chain provided by the interpreter.

Therefore, in the *difference*, "polysemy is the property of concepts to present variations in meaning, both in the synchronic space of discussion constituted by the same scientific community and over time, which demarcates the history of a concept and its use in this or that field of knowledge" (Barros, 2021: p. 22). The variety of meanings may arise due to the complexity and breadth of the legal field, the different sources of law, the historical evolution of legal vocabulary, and the influences of different legal systems.

> The entire concept is rightly inscribed in a chain or system within which it refers to the other, to other concepts, through the systematic play of *differences*. In such a play, *difference* is no longer a concept, but rather the possibility of conceptuality, of the process and of conceptual systems in general. For this very reason, *difference*, which is not a concept, is not a simple word, that is, what we represent as the calm and present, self-referential unity of a concept and a phoneme. We will see later the consequences of this for the word in general (Derrida, 1991: p. 42).

Within a language and its grammatical system, what we find are essentially distinctions. Through a process of categorization, these *differences* can be organized into a systematic, classificatory, and seemingly statistical inventory. However, it is

[3]In the original text: "[…] law (droit) is essentially deconstructible, either because it is founded, built on interpretable and transformable textual strata (and this is the history of law (droit), its possible and necessary transformation, sometimes improvement)."

crucial to recognize that these *differences* play a significant role not only within the domain of language, but also in speech and in the complex interactions between language and its oral expression (Derrida, 1991).

Every word, whether written or not, is intrinsically linked to understanding; otherwise, it will remain only as a potentiality within the sign. The word only comes to life through the meaning attributed to it by the interpreter. As long as the current interpretation is absent, the normative text will remain incomplete in relation to the specific context of the present (Megale, 2007). Understanding is the manifestation of *difference*, as it acts as a bridge between the word and practical experience, between meaning and the context employed. Therefore, language in the legal system, when a word is interpreted appropriately, becomes effective in communicating ideas, concepts, and intentions. It is crucial that interpreters are aware of the context and nuances of the meaning of words in order to ensure efficient communication and accurate understanding in the context of the present.

> We use concepts to describe values, but we disagree, sometimes strongly, about what those values are and how they should be expressed. We disagree because we interpret the practices we share slightly differently; in a way, we have different theories about which values best justify what we admit as central or paradigmatic characteristics of that practice. This structure makes our disagreements about freedom, equality, and the rest genuine. It also makes them disagreements of value, rather than disagreements of fact or disagreements about standard or dictionary meanings (Dworkin, 2012: p. 18).

In other words, those who interpret the norm are attentive to the *difference* in meaning, and not just what is read at first glance. In other words, the interpreter is not bound to the text as written and its literal meaning, but to the range of meanings that occupy the same space as the signs placed there in an orderly manner. In legal norms, conditions or assumptions are established that must be met in order for them to be applied. The positivity of a norm means that it was created through a formal source recognized in the legal system, such as legislation or regulation.

Derrida proposes understanding the origin of meaning as a chimerical construction, situated on a pre-discursive and pre-ontological plane that he calls Khôra, in which meaning and non-meaning, form and formlessness are not yet distinguishable (Derrida, 1995). This space, taken from the Platonic tradition and radically reinterpreted, does not function as a stable foundation, but as a generative instance that welcomes marks without extracting definitive determinations from them. This chimerical character does not constitute a logical problem to be overcome, but the very condition of possibility for legal interpretation and legal language (Derrida, 1995).

Like the ambiguity of the Oracle of Delphi, whose message to Croesus contained a decisive statement without a specific recipient, normative language retains a generic, impersonal scope that escapes any hermeneutic technique and pre-

vents the complete saturation of meaning (Heritier, 2023). In this context, the legal interpreter moves in a semantic field that is never complete; even the most well-founded judicial decision inevitably reaches a threshold where the interpretive choice reveals its contingency and the original violence that accompanies every foundational act. Khôra thus designates this interval—or différance—that enables the functioning of law, even though it remains irreducible to any conceptual apprehension and constitutes the space in which the normative text opens itself to multiple readings (Derrida, 1995).

Understanding law from this Derridean perspective implies recognizing its supplementary and chimerical nature, simultaneously rational and imaginary, marked by a formal coherence that coexists with political, affective, and rhetorical forces that give it dynamism and instability (Heritier, 2023). Legal semiotics informed by deconstruction does not seek to eliminate the undecidable element—a task that would correspond to an illusion of absolute foundation—but to learn to inhabit this threshold responsibly, assuming that every decision occurs without ultimate guarantee and requires ethical responsibility toward the other (Heritier, 2023). It is precisely in this interpretive and performative gesture that law continually remakes and reinscribes itself.

This intermediate space of language, interpretation, and meaning, situated between the determinable and the indeterminable, makes it possible to establish a law that is more conscious of its own founding fictions, more permeable to intercultural dialogue, recognizes the internal foreignness of all language, and is more attentive to the affective, rhetorical, and narrative dimensions that historically traverse its formation, from its oracular roots to its contemporary manifestations in globalized societies (Heritier, 2023). Far from weakening it, this recognition strengthens law as a living practice of justice, understood, from Derrida's perspective, as always to come, open to the other and irreducible to any conceptual closure.

Therefore, the norm is not only a linguistic and grammatical creation based on language, but it can also break with and be the opposite of grammar, as it involves human deliberation and an understanding of essential *differences*. "The general legal norm is always a simple framework within which the individual legal norm must be produced. But this framework can be broader or narrower" (Kelsen, 1998: p. 171). The legal context and the interpretation aim to establish the framework that represents the Law to be interpreted; that is, they outline the limits and scope of the norms that are in force.

The idea is that legal interpretation should not necessarily lead to a single solution considered correct. On the contrary, interpretation can lead to several possible meanings, provided they are within the framework established by law. These different rules have equal value, insofar as they comply with the applicable legal parameters.

Therefore, the interpretation of a law can result in several valid conclusions, all compatible with the legal system. However, only one of these solutions will effec-

tively become positive law when the law is applied by the interpreter, such as a court. Thus, legal interpretation recognizes the existence of a margin of interpretation, but practical application and transformation into effective law depend on the decision of the enforcer. Therefore, the norm is essentially composed of *differences*, presenting different meanings, as already visualized by Kelsen (1998: p. 249) when he speaks of the normative framework:

> The question of which of the possibilities presented in the applicable legal frameworks is the "correct" one is not even—according to the assumption on which we start—a question of knowledge directed at positive law; it is not a problem of legal theory, but a problem of legal policy. The task of obtaining, from the law, the only fair (correct) sentence or the only correct administrative act is, in essence, identical to the task of those who propose, within the framework of the Constitution, to create the only fair (correct) laws. Just as we cannot extract the only correct laws from the Constitution through interpretation, neither can we obtain the only correct judgments from the law through interpretation. There is certainly a *difference* between these two cases, but it is only a quantitative *difference*, not a qualitative one, and consists only in the fact that the legislator's binding nature in material terms is much less than that of the judge, in that the former is relatively much freer in the creation of law than the latter.

A norm that is enforced through a volitional act is considered a positive norm. In the context of moral or legal positivism, only established positive norms are relevant as objects of study; that is, those created by acts of will, especially by human acts of will. Norms established by acts of human will are, in the true sense of the word, arbitrary in nature. This means that any and all conduct, subject to a restriction that is subsequently verified, can be determined in acts of will as mandatory (Kelsen, 1998).

The normative framework establishes the basic parameters for the norm to be juxtaposed (motives, objects, scope, limits), but it is the *difference* that enables its effective application in different scenarios. Interpretations may vary—and it is even acceptable for this to happen in order to maintain normative health and effectiveness—but they must remain within the limits outlined by the normative framework, and within an ethical, moral, and constitutional context. It is important to note that the interaction between *difference* and the normative framework also poses challenges. The search for a balance between diverse interpretations and the maintenance of normative coherence is a constant dilemma in legal hermeneutics. How to deal with the diversity of interpretations without compromising the stability and predictability of the legal system is a critical issue that needs to be addressed.

Thus, the relationship between *difference* and the normative framework in legal hermeneutics is a fertile field for future research. Exploring how diverse interpretations can coexist harmoniously within the limits established by the normative

framework, without compromising the integrity of the legal system, is a key area for investigation.

Kelsen's framework, representing the limits within which legal interpretations can occur, can be seen as analogous to Derrida's idea of *difference*. Both thinkers recognize that there is a plurality of possible interpretations of words, signs, and texts, and in this regard, of the legal norm. Therefore, it is not a plausible pursuit of hermeneutics to identify the correct, true, or right legal norm, but rather a complex issue involving political, social, and contextual factors.

Therefore, when relating Kelsen's framework to Derrida's *difference*, there is a convergence in the idea that legal norms and texts do not have a fixed and unique meaning, but rather a multiplicity of meanings that are influenced by context, interpretation, and the political elements involved in the application of law. Both approaches emphasize the complex and multifaceted nature of legal interpretation.

The articulation between Derrida's différance and Kelsen's normative framework leads to a functional redefinition of the concept of legal certainty. Différance, as an inconstant and constitutive condition of language, prevents the ultimate fixation of any meaning and therefore does not have the effect of dissolving the formal structure of the legal system. On the contrary, the framework established by positive law maintains its validity as an external limit that defines the field of legitimate interpretative possibilities. What changes, in view of the recognition of the deferred and contextual nature of meaning, is the foundation on which the legally valid notion in the system rests. It ceases to depend on the metaphysical premise of an attainable textual univocity to rest on the transparency and responsibility of the hermeneutic process.

The legal certainty of the meaning of the norm, thus reconfigured, is guaranteed not by the illusory discovery of a single, pre-existing meaning, but by the openness with which the interpreter operates within the parameters outlined by the framework. It is required that the interpretive activity be conducted in a conscious, reasoned manner and subject to public scrutiny, acknowledging the contingency inherent in the attribution of meaning. In this way, the stability of the law is not compromised by the supposed instability of language; rather, it is demanded by it in a new form. The requirement for predictability and consistency remains but is met through procedural means, in which legitimacy emanates from the dialogical quality of meanings and the publicity of the reasons that guide the construction of normative meaning, ensuring that interpretative dynamism is exercised responsibly within the limits of the legal system.

5. Breaking with Interpretative Tradition: Hermeneutics of *Différence* in Practice

The contributions of Deleuze and Derrida, which converge in their emphasis on difference, present analytically distinct and complementary foundations for legal hermeneutics. Deleuze offers the ontological-social key through the concept of

intensive difference, which is not reduced to a quantitative variation but constitutes a qualitative force of transformation that emanates from the factual representation itself. This notion reveals how normativity is under continuous pressure from *social becoming*, requiring legal interpretation to be sensitive to new realities and the multiplicity inherent in social phenomena, thus legitimizing the evolution of law in the face of intense and as yet unclassified social demands.

Derrida, on the other hand, provides the linguistic-semantic key through the concept of *différance*, which unveils the system of meaning. In his approach, the normative text is marked by an irreducible difference and a permanent postponement of fixed meaning. This observation authorizes and, more than that, demands that interpretation actively explore the plurality of meanings that is always present and deferred in language, including that of the law, dispelling the illusion of univocity and redefining the hermeneutic process.

Together, these conceptual constitutions enable the hermeneutist to perform a doubly informed reading: a reading that simultaneously considers the social world in its transformative dynamics—which pressure and re-signify the law—and the very texture of normative language—whose intrinsic polysemy opens the field for responsible and contextualized interpretations. Thus, the hermeneutics of difference, far from promoting arbitrariness, is structured as a rigorous practice that responds both to the mutability of reality and to the polysemic nature of the norm, ensuring that the legal system remains faithful to its principles and capable of renewal in the face of social complexity.

Language is a fundamental phenomenon of human existence, serving as a primordial condition for attributing meaning to the world. This semantic operation transcends the mere cognitive act, involving complex dynamics of perception, interpretation, and interaction with the environment, mediated simultaneously by the corporeal and mental dimensions. In this process, the operations of naming and conceptualization prove to be compelling, as they allow for the logical structuring of reality, converting apparent disorder into an orderly and intelligible system.

In the legal sphere, language takes on an even more relevant function, acting as an essential vehicle for the formulation, transmission, and application of the norms that govern society. However, its plural and multifaceted nature presents significant challenges, particularly with regard to the interpretation of legal texts. It is important to note that legal language does not operate in semantic isolation, but is necessarily embedded in a historical, social, and cultural context that directly conditions its understanding and practical application. This critical stance highlights how formalistic interpretations can, in fact, mask power operations and perpetuate prejudiced views, as warned in the jurisprudential debate itself.

> [...] Prejudice is a preconceived notion. It is a conceptual formulation anticipated or devised by a mind closed in on itself and therefore lacking support in reality. Therefore, it is a value judgment not authorized by reality, but imposed on it. And imposed on reality with fire and sword by a voluntaristic,

> or sectarian, or superstitious, or obscurantist, or industrious mind, when not voluntaristic, sectarian, superstitious, obscurantist, and industrious at the same time. A kind of beam in the eye of reason and even of feeling, but collectivized enough to become a cultural trait of an entire people or geographically located population. This makes it even more dangerous for social harmony and the objective truth of things (Brazil, 2011: pp. 632-633).

An analysis of language in its multiple manifestations reveals considerable conceptual, semantic, and terminological variation between different social, cultural, and professional groups. This linguistic diversity raises profound philosophical questions: what are the legitimate limits of interpretation? How do semantic variations influence the application of law? Would it be possible to establish a universally understandable legal language? Such questions show that language is far from being a neutral and static manifestation, but rather a dynamic phenomenon subject to continuous change. In the legal field, this characteristic is particularly relevant, as normative discourse not only adapts to the current legal system but also modifies it through interpretative processes.

Proper analysis of legal texts requires a bifocal approach, encompassing both the linguistic and extralinguistic dimensions of the norm. On a strictly linguistic level, it is necessary to consider the formal structure of the normative text, paying attention to its syntactic, semantic, and pragmatic elements. Although literal interpretation is a necessary step in the hermeneutic process, it is insufficient on its own, given that words do not have fixed or absolute meanings; on the contrary, their meanings are constructed based on contextual, historical, and social relationships.

With regard to the extralinguistic dimension, it is up to the legal interpreter to analyze factors that transcend the normative text, such as the historical context of its elaboration, the prevailing social values, the teleological purposes attributed by the legislator, and the general principles of law. From this perspective, as Megale (2005) points out, legal discourse establishes a dialectical relationship with the legal system, adjusting to its provisions while simultaneously acting as a transforming element of its own structure.

> From an extralinguistic perspective, considering the legal text, the discourse must be taken in its entirety within the legal system by which it is updated, while at the same time updating it. It can thus be seen that the text, from both angles—linguistic and extralinguistic—has a context that must be considered by the interpreter. Just as the discourse must be accepted in its entirety, with the influences of the linguistic context, it can also be transformed by that context. The legal context can also be transformed by the discourse of a legal text through interpretation (Megale, 2005: p. 151).

The legal interpreter plays an active and responsible role in this process. Their function goes beyond mere textual decoding, requiring critical and reflective engagement based on: (a) solid technical and jurisprudential knowledge, with mas-

tery of legal institutions, precedents, and established hermeneutic methods; and (b) a humble and open intellectual attitude, avoiding dogmatism. As Megale (2005) warns, only this dual disposition allows one to adequately grasp the meaning that is revealed.

The interpreter must bring all their accumulated knowledge to bear on the interpretive process, as well as the humility and selflessness characteristic of a congenial and fraternal openness toward the object. Only then will they be able to see what is revealed, without the risk of the object shining before a blind man (Megale, 2005: p. 165).

Contemporary legal hermeneutics is undergoing a significant paradigm shift, with the emergence of approaches that question traditional assumptions of legal interpretation. Of particular note is the paradigm of *difference*, which proposes a radically different understanding of the hermeneutic process, breaking with the tradition that favored unity, coherence, and convergence of meanings. According to Simioni (2018), this new approach values dissent, plurality, and the dispersion of meanings, characterized by the acceptance of incoherence, conflict, and multiplicity as constitutive elements of the interpretive process.

This epistemological rupture is uniquely relevant to the theory and practice of law, shifting the axis of legal interpretation from the search for the truth of the legal text to a dynamic understanding of law as a field of social disputes. While traditional hermeneutics sought to align understanding with original sources (Constitution, laws, principles), the paradigm of *difference*, inspired by Derrida and Deleuze, understands legal meaning as a permanently open, contingent construction subject to reinterpretation.

The hermeneutics of *difference* finds its philosophical foundations in three essential pillars that reconfigure the traditional understanding of legal interpretation. The first pillar consists of Derrida's notion of *différance*, which establishes the impossibility of definitively fixing legal meaning, revealing the ever-deferred and constantly shifting nature of normative meaning. The second foundation lies in the Deleuzian conception of intensive *difference*, whereby it is understood that the law does not apply identically, but is qualitatively transformed in each specific case, generating new interpretative possibilities. This theoretical basis is complemented by semantic externalism, which conceives legal meaning as the result of the dynamic correlation between legal text and constantly changing social realities (Megale, 2005).

In the Brazilian legal scenario, the actions of the Federal Supreme Court offer paradigmatic examples of this innovative hermeneutic approach, revealing three striking characteristics in its decision-making practice. The first is plurireferentiality, manifested in the eclectic combination of national precedents, foreign jurisprudence, political arguments, and emerging social demands. The second characteristic is the explicit valorization of dissent, where antagonistic positions coexist without necessarily seeking a final synthesis. The third is manifested in the recognition of new rights, especially for minorities previously excluded from the legal

protection system.

Paradigmatic decisions by the STF, such as the recognition of same-sex unions (ADI 4277/DF) and the criminalization of homophobia, illustrate both the potential and the challenges of this hermeneutics. These cases demonstrate how a differentiated approach allows the legal system to keep pace with social changes, ensuring recognition of previously marginalized *differences*.

The decision in question exemplifies an interpretive approach that transcends formalistic rigidity, privileging diversity and the multiplicity of normative references. By incorporating elements such as human rights, public policies of inclusion, and sociocultural transformations, rather than restricting itself to a literal reading of the legal text or traditional principles, the ruling highlights the growing appreciation of dissent and plurality as foundations for the construction of legal meaning in contemporary times. This innovative reinterpretation removed any exclusionary hierarchy, reaffirming full legal equality, as argued,

> [...] the term "family entity" does not mean anything different from "family," as there is no hierarchy or difference in legal status between the two forms of constituting a new domestic unit. I am saying: the expression "family entity" was not used to designate an inferior type of domestic unit, because it is only halfway to the family that is formed by civil marriage. It was not and is not that, because there is no such thing as a sub-family, second-class family, or "so-so" family (recalling Chico Xavier's poem). The phrase was only used as a perfect synonym for family, which is an organism, an apparatus, an entity, albeit without legal personality. Therefore, unlike marriage or stable union itself, the family is not defined as a simple institution or legal concept in a purely objective sense (Brazil, 2011: p. 653).

This interpretive paradigm reflects a historical context in which traditionally marginalized groups—such as blacks and women—consolidated themselves as active agents of social transformation throughout the 20th century, demanding recognition and equality before the law. In this scenario, ADI 4.277 emerges as a decisive milestone in legal hermeneutics guided by *difference*. By recognizing same-sex unions as family entities, the Federal Supreme Court not only promoted a reinterpretation of Article 1723 of the Civil Code of 2002 and Article 226, § 3 of the Federal Constitution of 1988, but also substantially reconfigured the very concept of family in the Brazilian legal system. This commitment to material equality requires combating all forms of discrimination, in line with the express constitutional imperative that,

> [...] the Brazilian Constitution expressly prohibits prejudice based on sex or the natural differences between women and men. This prohibition equates being a man or a woman with the contingencies of people's social and geographical origins, as well as age, skin color, and race, in the sense that none of these accidental or fortuitous factors can be used as a cause for intrinsic merit or demerit of any individual. [...] to acknowledge the differences be-

> tween individuals and bring to light the basic personal relationships of a segment of society that lives a very important part of its life in the shadows. We must accept the ordinary existence of diverse sexual orientations and accept the legitimate claim that their family relationships deserve the treatment that the legal system confers on acts of civil life performed in good faith, voluntarily, and without any potential to cause harm to the parties involved or to third parties (Brazil, 2011: pp. 640, 677).

The decision demonstrates how contemporary hermeneutics, in dialoguing with social *differences*, goes beyond the mere literal meaning of the law to ensure the effectiveness of fundamental constitutional principles, such as human dignity and material equality. This ruling is a paradigmatic example of intensive *difference* (in Deleuze's conception), insofar as the norm is qualitatively reinvented to encompass emerging social realities. Simultaneously, Derrida's concept of *différance* applies, since the decision destabilizes pre-established legal meanings, opening space for the inclusion of previously excluded pluralities (Brasil, 2011). This dynamic understanding of legal meaning highlights the importance of distinguishing, in the interpretative process, between the letter of the law and what can be inferred from it, noting that

> Interpretative judgments can only be correctly understood through the difference (ontological—ontologische Differentz) that exists between text and norm. Interpretation in accordance with the Constitution does not modify the text of the norm but produces a norm based on constitutional parameters. This is the limit of meaning and the meaning of the limit. In other words, it is only on the basis of constitutional parameters, and not on the basis of analogies or other forms of extension of meaning, that the aforementioned attribution of meaning (Sinngebung) can be made. And another thing: the difference between text and norm does not mean that any norm can be attributed to the text (Streck, Barretto, & Oliveira, 2009: p. 79).

Thus, the case illustrates not only an evolution in the interpretation of the law, but also the legal system's ability to respond to social demands for recognition and justice, reaffirming the transformative role of hermeneutics in the realization of constitutional values. It also shows that it is capable of accepting and applying hermeneutics based on the philosophical conditions of *difference*.

The decision elucidates an interpretation that privileges diversity and multiplicity of references (human rights, public policies of inclusion, social acceptance), rather than a rigid reading of the legal text or traditional principles, highlighting the value of dissent and plurality in the construction of legal meaning.

This differentiated approach implies a profound critique of the assumptions of traditional theories of interpretation, problematizing three classical foundations. First, it contests the idea of the completeness of the legal system, questioning neopositivist postulates. Second, it challenges the notion that interpretive choices constitute isolated acts of will, overcoming the limitations of decisionism. Finally,

it overcomes formalism by demonstrating the methodological impossibility of separating the normative text from its social, political, and historical context of production and application.

The transformative potential of this hermeneutics manifests itself in three main dimensions: in the democratic sphere, by welcoming and incorporating dissenting and minority interpretations; in terms of identity recognition, by allowing cultural, racial, and gender *differences* to find expression in the legal universe; and in its critique of established power, by revealing how relations of force and influence shape the production of legal meaning, questioning traditional hierarchies.

However, this innovative approach is not without significant practical challenges. The first concerns the inevitable tension between interpretive plurality and legal certainty, raising the question of how to reconcile openness to multiple meanings with the need for predictability that characterizes the rule of law. The second challenge involves the limits of judicial activism, questioning the extent to which the judiciary can advance in the creation of rights without an explicit legislative basis. The third and no less important challenge refers to the risks of social fragmentation, since excessive valorization of dissent could, in theory, weaken the unifying role that law traditionally plays in complex societies.

The hermeneutics of *difference* proposes a vision of law as a permanent space for social negotiation, where normative meanings are constructed collectively from concrete struggles. This is not mere relativism, but a sophisticated understanding of the multiple mediation of legal meaning, a process that, as recent practice by the STF demonstrates, has proven particularly fertile for the recognition of new rights, even though it poses theoretical and practical challenges that require continuous reflection.

The hermeneutics of difference, rather than generating uncertainty or arbitrary decision-making, redefines the very parameters of interpretive legitimacy. This approach does not eliminate the Kelsenian normative framework but operates entirely within it, replacing the expectation of predictability based on fixed meanings with transparency, responsibility, and the equalization of meanings in the interpretive process. The signifying structure, represented by the normative text, is not bound to strictly reproduce the literal or grammatical meaning obtained within structuralist thought parameters; on the contrary, difference acts as an element that reveals the social and semantic dimensions present in the norm, allowing the interpreter to identify, among the possible meanings, the one that best harmonizes with the demands of the current historical-social context.

In this context, predictability ceases to be a static fact extracted from the letter of the law and becomes a construct ensured by the publicity of the grounds for decisions, by argumentative consistency with constitutional principles, and by openness to dialogue with legitimately constituted social demands. What could be simplistically labeled as judicial activism is, in reality, a constructive and responsible stance of normative implementation, compatible with positivist theory itself, which has never excluded the need for judicial discretion in situations where the

mechanical application of the law proves insufficient—as recognized by authors such as Kelsen and Hart.

This judicial action represents a response to intense transformations in social relations, constituting a necessary evolution within the limits of constitutionality, as demonstrated in the paradigmatic precedent of same-sex unions, in which the Federal Supreme Court adopted a systematic and principled interpretation to ensure equal protection. In this sense, the hermeneutics of difference does not weaken the rule of law; on the contrary, it reinforces it by requiring that the application of norms be permanently justified in light of the differences that make up the social world, avoiding dogmatism and preventing injustices resulting from strictly formalistic readings that are insensitive to historical developments.

6. Final Remarks

This article has demonstrated that *difference* is an inherent and indispensable condition of legal hermeneutics, as evidenced by the philosophical contributions of Deleuze, who conceives of *difference* as factual multiplicity, and Derrida, who approaches it as linguistic instability (*différance*). The analysis developed reveals profound implications for the legal field, both in practical and theoretical terms.

The tension between Kelsen's and Dworkin's perspectives paradigmatically illustrates the challenges of *difference* in legal hermeneutics. While Kelsen, with his normative framework, establishes the limits within which interpretation must operate to maintain legal certainty, Dworkin, through the chain novel, recognizes the inevitability and even the creative necessity of interpretive *difference*. This apparent contradiction is, in fact, dialectical: the Kelsenian framework ensures the identity of the legal system, while the Dworkinian approach allows for its historical evolution—demonstrating how *difference* and identity necessarily coexist in hermeneutic practice.

In the sphere of legal practice, it is imperative that judges and legal practitioners recognize the inevitability and, more than that, the desirability of plural interpretations within the normative framework proposed by Kelsen. As demonstrated in paradigmatic decisions such as ADI 4277/DF, *difference* allows the law to adapt to emerging social demands without compromising the principles of legal certainty and predictability. This interpretative flexibility proves especially crucial in complex and pluralistic societies, where new issues and conflicts constantly arise.

For academic research, this study paves the way for future investigations that could explore, on the one hand, how courts apply the hermeneutics of *difference* in contemporary challenges such as digital rights and the regulation of artificial intelligence. On the other hand, it would be relevant to examine the ethical limits of interpretive dissent, questioning the extent to which a plurality of meanings can be legitimately accepted without compromising the coherence of the legal system.

The critique of traditional formalism developed here shows how conventional hermeneutics, by neglecting the constitutive role of *difference*, tends to stifle normative interpretation. In contrast, the dynamic model proposed in this article—

sensitive to context and social transformations—allows the law to maintain its vitality and relevance in the face of a constantly changing reality.

Throughout this investigation, it has become evident how *difference* manifests itself in legal hermeneutics through multiple dimensions: in the factual variability of concrete cases, in the diversity of normative interpretations, in the influence of distinct temporal and spatial contexts, and in the very polysemic nature of legal language. The contributions of Deleuze, with his emphasis on *difference* as a social phenomenon, and Derrida, with his analysis of linguistic *difference*, prove to be complementary and equally essential for a more sophisticated understanding of legal interpretation.

The approach developed in this work made it possible to overcome static views of interpretation, incorporating the complexity of the contemporary legal world and keeping the law sensitive to social transformations. The research confirmed that *difference* is not a mere contingency, but an essential condition for legal hermeneutics adequate to current challenges. Its recognition, however, requires theoretical courage to overcome traditional paradigms and an unwavering commitment to social justice.

Three main directions stand out as possible developments for future research: the analysis of specific cases in which the hermeneutics of *difference* has been employed, with the aim of evaluating its practical effects on the application of law; comparative research between different legal systems, with the aim of understanding how, in each context, the tension between interpretive plurality and the search for legal certainty is balanced; and, finally, the examination of the theoretical and normative implications of the concept of *difference* in the formulation of public policies and legislative drafting.

In summary, *difference* reveals itself not as an obstacle, but as an essential driver for the evolution of law. Its responsible acceptance, which balances innovation and stability, pluralism and consistency, represents a promising path toward legal hermeneutics more suited to the complexity of the contemporary world. By demonstrating the constitutive nature of *difference* in legal interpretation, this research hopes to contribute to the development of a theory and practice of law that is more sensitive to the demands of our time.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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