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## Legal Hermeneutics, Analysis from Natural Law and Legal Positivism, And Its Application in Law

### La Hermenéutica Jurídica, Análisis Desde El Iusnaturalismo E Iuspositivismo Y Su Aplicación En El Derecho

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#### **Abstract**

*This article deals with legal hermeneutics and its application in law. Since hermeneutics is considered the central tool of legal epistemology, which, through reflection and reasoning, seeks to approach the truth of the norm and apply it correctly. That is, it is more focused on the methodological question of applying the norm, especially in practice. Jurists use interpretation through hermeneutics to understand how to use the norm appropriately. An interpretative analysis of the norm is carried out based on objective law or positive law, creating a connection between being and knowing so that the legislator can apply the norm correctly. In conclusion, this research includes a doctrinal study and applies a qualitative method, allowing for a documentary analysis of the topic presented.*

**Keywords:** Legal Hermeneutics, Law, Natural Law, Legal Positivism.

#### **Resumen**

*El presente artículo trata de la hermenéutica jurídica y su aplicación en el derecho. Ya que la hermenéutica es considerada como la herramienta central de la epistemología jurídica, que a través de la reflexión y el raciocinio busca poder acercarse a la verdad de la norma y poder aplicarla en la manera correcta. Es decir, sobre la cuestión metodológica de aplicación de la norma, esto más direccionado a la práctica. Ya que los juristas ejecutan la interpretación a través de la hermenéutica para poder saber cómo utilizar la norma de manera adecuada. La realización de un análisis interpretativo de la norma en base al derecho objetivo o el derecho positivo, y dar esa vinculación del ser y saber para que de esa manera el legislador al momento de aplicar la norma. Para finalizar la presente investigación se realiza un estudio doctrinal y se aplica el método cualitativo porque permite el análisis documental del tema planteado.*

**Palabras Clave:** Hermenéutica Jurídica, Derecho, Iusnaturalismo, Iuspositivismo.

#### **Introduction**

Legal hermeneutics is considered the central tool of legal epistemology. Through meticulous attention to detail when interpreting, it seeks, through reflection and reasoning, to approach the truth of the norm

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and apply it correctly. It pertains to the methodological question, especially focusing on practice. It delves into how jurists use hermeneutics to understand how to use the norm appropriately when they apply it. While it may appear straightforward to align behavior with a right, there can be subtle nuances in that behavior that modify what is stipulated and turn it into something else.

Legal reasoning in the field of hermeneutic interpretation has moral and political components. However, this does not mean that their peculiarities are ignored, especially the relevance of the element of authority, particularly aimed at legislators. The combination of naturalism and positivism does not make applying the law entirely straightforward. On the contrary, establishing the law becomes somewhat complicated, although it also becomes more human. Naturalism allows for that evaluation from the essence of being along with the law, creating a connection between being and saying.

The hermeneutic method is ever-present in that every cognitive operation of legal texts involves a reconstructive effort to understand their meaning. Yet, this operation would be impossible without an understanding of the formal structure and the nature of the rules that make up the legal system. (Hidalgo, 2018)

The application of a legal norm involves prior interpretive work on it, not exclusively by the judge, but by any operator whose intention is to base their reasoning on the legal system. Hence, the pressing need to raise awareness about the importance and essence of hermeneutics, not only in the application of legal norms to specific cases as a methodology but also from an epistemological, ontological, logical, and argumentative perspective, within the framework of the demands of a specific society.

## Methods

The present research allowed for an analysis of the application of legal hermeneutics in law. In this regard, the research follows a qualitative approach through the interpretation and study of the topic. The structure focuses on a deductive review and documentary analysis. Thus, the hermeneutic method is ever-present since every cognitive operation of legal texts involves a reconstructive task of meaning. However, it is equally true that this operation would be impossible without understanding the formal structure and nature of the norms that make up the legal system (Hidalgo, 2018). The research type is bibliographical as it gathers information from scientific articles and certified digital texts, which allows for acquiring scientific knowledge. Additionally, it can be classified as action research since it is established based on what Sampieri (2018) referred to.

Regarding the research design, no variables are manipulated because it is based on doctrinal theory and guided by the analysis of norms related to the topic developed. The scope is analytical and explanatory as it addresses questions that arise during its development.

## Results and Discussion

In the study of law, legal hermeneutics is essential to begin by approaching it from the basic perspectives of its origins and understanding how it emerged. Firstly, it raises the emergence of law from natural law.

### Natural law and Legal Hermeneutics

Natural law arises naturally from the beginning of human existence, as every human being possesses rights without any distinction regarding age, health condition, sexual orientation, political ideology, religion, or any characteristic that allows discrimination.

To achieve this, two things would be necessary: overcoming the methodological dualism of "be" and "must be", and abandoning the thesis that law is identical to legal norms. Only by moving away from these relics of a past

era can the path be opened to a new theoretical and methodological approach: it would no longer be a matter of deducing the law logically from rigid norms, but rather, the question would be more about how law can be hermeneutically understood starting from the living historical language. (Kaufmann, 2016)

An approach is proposed based on the governing rules since it questions a method of logical deduction of the law, which involves analyzing existing norms and logical reasoning to determine legal consequences. However, this approach has some limits because it does not consider the historical context and the evolution of legal language over time. Instead, a proposal is made based on the hermeneutical understanding of the law. Hermeneutics involves interpreting the meaning of texts and discourses in their historical and cultural context. The analysis of the text calls for abandoning the approach of logical deduction based on rigid norms and adopting a hermeneutical understanding of the law. By doing so, a broader and context-based understanding of the law is promoted, allowing for a more suitable and just application in complex and changing situations.

It is understood that the hermeneutical method, which is responsible for the understanding of texts, is present everywhere, and in this case, it is essential in legal texts. This method implies reconstructing the meaning of legal texts, considering their context and the structure by which they were created. However, it is considered that this hermeneutic work would not be possible without prior knowledge of the norms that make up the legal system, in this case, natural law, which is considered the foundation of human rights, a norm superior to any existing legal system.

In summary, the use of the hermeneutical method and the understanding of legal norms go hand in hand. One can apply a hermeneutical methodology for normative understanding only if the reality and context of this regulation are known. In the case of natural law, to understand it, one must consider that it emerged to establish an ethical and moral basis for the law, and these are essential for a proper and just interpretation of the law.

On the other hand, the hermeneutical exercise of interpreting legal norms, while it demands theoretical foundations for its performance, does not stop there but reaches the practical level. It directs the sense of its application and justification, thereby directly affecting the legal sphere of individuals in their property, rights, obligations, and even their freedom. (Manríquez, 2019)

It is mentioned that for the hermeneutical exercise of interpreting legal norms, one first needs theoretical foundations for its effective functioning. This implies that legal professionals must be familiar with the principles and techniques of legal interpretation, such as legal and jurisprudential foundations, or possess basic knowledge about the meaning and scope of legal provisions, as well as their relationship with other legal provisions and the legal system as a whole.

However, this interpretation is not only theoretical but also practical through the following steps: analysis, interpretation, integration, application, and argumentation of legal norms. These means allow legal professionals to understand and apply the norm correctly, with a direct impact on people's legal sphere, as emphasized in the text regarding their property, rights, obligations, and even their freedom. These factors are intrinsic to natural law, as natural law comprises essential human rights, and the correct interpretation of the norm can affect people's rights, obligations, property, and freedom as it can determine whether a right is recognized, and obligations are whether imposed or deprived.

Maybe Hermeneutics' proposals are not far from this type of natural law. Consider that the problem in need of a solution, the context, is not just an empirical fact. It represents a configuration of human meaning that offers more or less vague guidelines for creating legal regulations. Even though many hermeneutists deny this connection, it is essential to question what position they leave this context in, a context that has legal significance and is not subject to legislative decisions. (Rodríguez, 2010)

Hermeneutics acknowledges that the interpretation of the law cannot be solely reduced to a grammatical

or logical analysis of the rules. It must consider contextual elements such as the legislator's intent, the purpose of the norm, and the values and principles underlying the legal system.

### **Alternative Paradigm of Natural Law and Legal Positivism**

The alternative paradigm to both natural law and legal positivism is, indeed, legal hermeneutics, due to the structural and primary focus it places on the interpretative moment and its awareness of the linguistic nature of the experience of the world. (Zaccaria, 2015)

Legal hermeneutics is an alternative approach to both natural law and legal positivism, as it emphasizes its focus on the interpretative moment and its awareness of the importance of language in the legal experience. This implies that legal hermeneutics considers the interpretative process fundamental and recognizes that language influences the understanding and application of the law, providing tools and approaches to comprehend and apply legal norms in a more contextualized and reflective manner.

The aim is to achieve a conceptual reflection in which Hermeneutic Philosophy can establish itself as the foundation for the Philosophy of Law and the legal phenomenon and, consequently, tentatively, as a basis for future developments in the current Hermeneutic Philosophy of law, to be an alternative to Natural Law and Legal Positivism.

Therefore, the law would be supported by hermeneutics, based on the central concept of meaning, as the depth and fullness of the legal being, in which its evaluative possibility is established as a sense of justice. Thus, the Hermeneutic Philosophy of Law would provide a return to ethics, in the light of what legally concerns it, with open transcendence for renewal, allowing a way to change the static idea of the Philosophy of Law, as justification is not based on moral content, but on the sense of being. (Yàñez, 2023)

It is suggested that hermeneutics can become a foundation of law, offering an alternative to both natural law and legal positivism. This is where the importance of hermeneutics is emphasized, and its evaluative possibility is established as a sense of justice.

It highlights its openness to renewal and its ability to change the static conception of the philosophy of law. This text addresses the adoption of hermeneutic philosophy as a foundation for the philosophy of law and the legal phenomenon, proposing a vision toward justice. It seeks to overcome the limitations of natural law and promote an ethical and dynamic approach to understanding and applying the law.

In summary, the relationship between hermeneutics and natural law lies in the fact that hermeneutics provides the methods and tools necessary to interpret and understand natural law principles. Hermeneutics allows the analysis of the language and context in which natural law principles are expressed, facilitating their application and understanding in the legal field. Furthermore, hermeneutics can also be used to interpret and understand legal sources that may be based on natural law principles, such as jurisprudence or international treaties.

In conclusion, hermeneutics and natural law are closely related in the sense that hermeneutics provides the means to interpret and understand natural law principles and apply them in the legal context. Hermeneutics becomes an essential tool for the interpretation and application of the fundamental principles and values of natural law in the legal context.

### **The Conception of Positive Law as the Exclusive Source of Legal Norms**

Legal positivism, in its various forms - exclusive, inclusive, and axiological - is incapable of serving as a tool to account for and operate within the new reality of the constitutional state, despite the significant contribution it made in the past to renew areas of legal philosophy and legal dogmatics.

On the other hand, the excessive emphasis on the prescriptive nature of legal norms neglects their

evaluative dimension and hinders the consideration of a constitutional legal order. All of this disqualifies legal positivism from participating in some central debates today. Based on the argumentation presented, it is concluded that legal positivism has already exhausted its historical cycle by not recognizing law as a complex social practice. (Atienza, 2007)

Legal positivism, in its various forms, is not suitable for operating within the new reality of the state. This is because legal positivism restricts legal theory to a purely descriptive nature, focusing solely on describing the norm. It also implies that legal positivism cannot consider the evaluative dimension of legal norms, where aspects such as ethics and morality related to justice, equity, and equality are not considered. This limited focus of legal positivism can be insufficient.

Legal positivism cannot account for all relevant aspects of legal reasoning, such as extensive or restrictive interpretation of norms, the use of general principles of law, and other instruments of legal argumentation that cannot be adequately explained by legal positivism.

### **Positivism and Legal Positivism**

Positivism, conceptualized as a philosophy whose fundamental principle was the thing-in-itself, represents a modern worldview rooted in the natural sciences. Legal positivism, a current that emerged and developed in the 19th century, was a product of the epistemological foundations of general positivism applied to the field of law. It utilizes interpretative, grammatical, historical, and logical methods, which helped characterize both general positivism and legal positivism. This remains a relevant and contemporary topic that will not lose its significance, as it provides an epistemological framework for legal practitioners. (Guamán Chacha, 2020)

The legal positivism of the 19th century is based on the epistemological foundations of general positivism. This legal positivism commonly prioritizes the study and understanding of law from a scientific and empirical perspective. It employs methods such as the imperative, grammatical, historical, and logical methods, which allow for the analysis and comprehension of law based on the meaning of legal norms, their historical evolution, and their logical coherence. It also aids in understanding the meaning and scope of legal norms in practical application.

Legal positivism remains a relevant topic today because its positivist approach provides a theoretical and methodological framework that can be useful for legal professionals when analyzing and applying legal norms in legal practice.

Legal positivism aligns with certain principles: the distinction and disconnection between law and morality, i.e., the distinction between the law *as it is* and the law *as it ought to be*. It views the legal world from a one-dimensional perspective, believing that all positive law is just by the mere fact of being positive law, regardless of its content, without consideration of its greater or lesser justice according to moral standards.

The conception that legal norms, meaning the conviction that legal norms consist of orders issued by human beings (legislators) to other human beings; the idea that law is a set of norms enforced through the use of force; the conception that judges apply the law but do not create it. (García, 2017)

Positive law is considered just solely because it is positive law. This implies that legal analysis focuses on the formal validity of norms and their belonging to a specific legal system without evaluating their content or considering ethical principles. It accepts that it is just because it is written into law. Furthermore, legal positivism asserts that legal norms are orders issued by human beings with the authority to legislate (legislators). Law is the result of human will expressed through legislative processes, where legislators enact the rules that citizens must follow. These norms are imposed and enforced by competent authorities, and non-compliance can lead to sanctions or coercive measures. Lastly, legal positivism maintains that judges must interpret and apply existing norms but do not have the authority to create new laws through their decisions.

In summary, the conception of positive law as the exclusive source of legal norms brings several problems. Legal positivism cannot address relevant aspects of legal reasoning, such as the interpretation of norms, the use of general legal principles, and other instruments of legal argumentation. Additionally, its excessive emphasis on the prescriptive character of legal norms hinders the consideration of constitutional legal order, making it insufficient for comprehending and applying the law in contemporary legal practice, as it cannot address the challenges and complexities present today.

### **Interpretation in the Application of Positive Law**

Positive law, also referred to as "written law," comprises a set of legal norms established by a legislative body and compiled within a national constitution. Since it is always in written form, it is closely connected to language, which plays a fundamental role in expressing and communicating legal norms. As stated by the author María García in her thesis titled "Legal Language," "Legal language tends towards writing because it is the means through which the rights and obligations of citizens are established." (Fernandez, 2017)

It is important to emphasize that positive law, or written law, consists of legal norms established by a legislative body and compiled within a constitution. These norms are conveyed through language, which plays a crucial role in defining the rights and obligations of citizens.

Legal language is employed in texts related to the law and written by legal professionals. The importance of using this language is highlighted to ensure precision and enhance understanding among legal professionals. It is also recognized that interpreting legal language can be challenging for citizens, and thus adapting technical terms into a more understandable language is encouraged to promote better comprehension.

### **Argumentation and Interpretation of Legal Hermeneutics in Law**

The field of law will always be closely linked to argumentation and interpretation in order to comprehend the law and know how to apply it. But given the perspectives of natural law and positive law, how can one determine which is correct? Indeed, contemporary society is primarily governed by legislative norms such as the Constitution, international treaties, or specialized organic laws in various branches of law, which, to some extent, has been effective in regulating a social system for order and coexistence among a state's citizens.

Now, taking into consideration the thoughts of prominent positivists such as Kelsen, it becomes somewhat intriguing. According to the principle of legality, "Everything that is not prohibited is allowed." In other words, if the law does not prohibit it, it permits it, as society needs to obey what is codified to be controlled. However, this leads to another point of debate concerning positive law. What happens if certain behaviors, which are considered unethical or immoral, are not explicitly addressed in the law? Are they then allowed?

On the other hand, regarding argumentation and interpretation from a natural law perspective, it is somewhat complex to appreciate. This standpoint asserts that law can only be explained through its connection with humans, without delving into the "why" or "for what purpose" of the law. It is justified on the grounds that it protects human dignity and is absolute and unchanging.

The key to comparing natural law and positivism regarding argumentation and interpretation lies in the fact that within positivism, it is clear that the only law to be followed is that which is legislated within a normative framework, subject to verification of its necessity in society through experimentation, logic, and reasoning.

As noted by positivist authors, interpretation within positivism is often done "doctrinally" because "the interpretation practiced by legal scholars, and generally by those who engage in legal science, is, therefore, known as 'scientific' due to the authority of those who practice it, and it becomes the preferred approach." (Aldana, 2020)

This interpretation is more empirical, involving an investigation based on the legislator's intent and the



language of the law, allowing for a well-founded argument based on an understanding of the norm. This approach can serve to defend a position effectively.

In this context, it is evident that a broader analysis is needed to make it clear why hermeneutics complements positive law. Positive law cannot always codify every human behavior or determine whether it is allowed because society is in constant evolution, and unfortunately, the law and society do not always progress at the same pace. Hence, positive law often presents significant legal gaps known as "legal vacuums," which occur when there is no expressly applicable legal provision to resolve a legal dispute under a specific positive law (Regla, 2021). In such situations, the application of legal hermeneutics during the interpretation and application of norms is necessary.

## Conclusions

The use of the hermeneutic method and the understanding of legal norms go hand in hand. One can apply a hermeneutic methodology for normative understanding only if the reality and context of this regulation are known. In the case of natural law, to comprehend it, one must consider that it emerged to establish an ethical and moral foundation for the law, which is essential for a proper and just interpretation of the law.

The concept of positive law as the exclusive source of legal norms brings several issues with it. For instance, legal positivism cannot address relevant aspects of legal reasoning, such as the interpretation of norms, the use of general legal principles, and other instruments of legal argumentation. However, adaptation to a legal system is necessary.

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