

DESCRIPTION AND ANALYSIS OF ARGUMENTATIVE ASSIMILATION

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- **ABSTRACT:** In this work, we present the description of an interactional and argumentative phenomenon that we have named “argumentative assimilation,” which represents the moment when two recalcitrant, antagonistic discourses begin to represent an argumentative alignment, due to the opponent’s adherence to the proponent’s speech. By revisiting rhetorical studies, we question the dichotomy “persuade” vs. “convince” (Perelman; Olbrechts-Tyteca, 2008; Perelman, 1989, 1999, 2002; Meyer, 2008a, 2008b; Grize, 1995; Angenot, 2008), to demonstrate four stages of the argumentative assimilation process, via Venn’s Diagram. By using a methodology focused on the study of verbal interactions, and also supported by studies of conversational analysis and the Dialogical Model of Argumentation (Plantin, 2008, 2016; Plantin; Doury, 2015; Traverso, 2007; Kerbrat-Orecchioni, 1992, 2011; Damasceno-Morais, 2021, 2022, 2023a, 2023b), we present an analysis of a case study, from the ‘TRIBUNAL’ database, which illustrates the phenomenon. We conclude that the study of argumentation from an interactional perspective is fruitful in helping us to understand similar phenomena, which would not be possible if we strictly followed studies of argumentation simply from a logical-mathematical and formalist perspective, in a Cartesian ideal.
- **KEYWORDS:** Persuasion; Conviction; Dialogical Model of Argumentation; Interaction; Moral Damage.

Neither Persuading nor Convincing

In our attempt to understand how the fields of rhetorical and argumentative studies have dialogued, we are troubled by a certain fragility in the dichotomy between the terms ‘persuade’ and ‘convince’. Beyond a classic dichotomy, we see various epistemological idiosyncrasies there. Broadly speaking, it seems to us that the most notable difference between *persuasion* and *conviction* is that the former (persuasion) more easily refers to the idea of intensifying subjectivities, in the realm of emotions. Therefore, persuasive factors in discourse retain a remnant of “irrationality,” sophistry, whereas conviction

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would be more associated with the “rationalizing” aspect of beings, more linked to the rationalizing dimension of beings, to reason. Thus, *persuasion* pervades the universe of everyday, ordinary relationships, but would be unwelcome, for example, in the world of exact sciences; while *conviction* would be more associated with the realm of “reason with scientific airs” or, at least, reason that needs to “seem reasonable,” as in judgments rendered in court verdicts, in the universe of judicial sentences and judgments of moral damage, for example, as we will show in this paper.

The issue is not simple. The highlighted dichotomy has given much to talk about since Plato’s discomfort with the sophists. It is important to clarify that we disagree with some rumors that associated ‘persuasion’ with the idea of ‘manipulation’ (Nettel, 2011, p. 1357)¹. We do not have time to reconstruct the entire secular quarrel involving the ancient Greeks, who, justly and ironically, have taught us much in matters of rhetoric and dialectic, the latter now placed, nowadays, in the isolated drawer labelled ‘argumentation.’ In this sense, looking at the pair ‘persuasion vs. conviction’ seems important to us, especially because today it is almost automatic to associate conviction with *reason* and persuasion with *emotion*, a notion we find lacking a solid explanation. This, in broad terms, is the issue under discussion in this study.

It is quite true that Perelman and Olbrechts-Tyteca’s Treatise (2008, p. 34) has already discussed the conceptual opposition between persuading and convincing, but without making much contribution, precisely because they merely reinforce the existing dichotomy. The Kantian view of persuasion related to the realm of subjectivity, opinion, suggestion, and appearance is clear in the same Treatise (p. 51). Perelman (2002, p. 37) also emphasizes, in his Rhetorical Empire, that a convincing discourse is one whose premises and arguments are universalized, that is, acceptable, in principle, by all members of a universal audience. For the author, moreover, “demonstrative proof, that of formal logic, is more than persuasive, it is convincing, as long as the truth of the premises is admitted” (Perelman, 1999, p. 106).

Clearly, persuasion is situated in the territory of alterity, since no one persuades themselves. However, one can convince oneself (Chaignet, 1888, p. 93 *apud* Perelman, 2002, p. 33). The author also believes that *persuasion* is a matter of a particular audience, while *conviction* engages a universal audience, that is, “every being of reason” (Perelman, 2002, p. 36-37). Following these discussions, the idea of “adherence” resonates with the notion of “communion of minds/spirits,” as highlighted in the initial pages of the Treatise, whereas conviction aligns with “logic” and “abstract truth” (Perelman, 1989, p. 79; Martineau, 2010, p. 5).

In this context, when examining the etymology of the term “persuade,” Plantin (2016, p. 450) notes that “this family also includes the proper name Peithô, the name of Aphrodite’s companion – perhaps Aphrodite herself - goddess of beauty, seduction, and persuasion.” Not far from this, Danblon (2005, p. 8) clarifies that the notion of persuasion is close to the image of the *femme fatale*, describing her as “a destroyer of

¹ All translations are made by the author of this article.

reason and social bonds, viewed with fear and fascination.” We add to these observations that Aristotle’s rhetorical proofs associate *ethos* and *pathos* with the domain of emotions, subjectivity, and imagination, while *logos*, this would belong to the domain of emerging discourse, reason, and cold argumentation.

Returning to the classic Treatise (Perelman; Olbrechts-Tyteca, 2008, p. 35), which brings the dichotomy to the scene, the authors state that “for Rousseau, it is pointless to convince a child if we are not able to persuade him.” The authors say: “a person may even be convinced of the dangers of chewing too quickly, but that does not guarantee that they will change their habits” (Perelman; Olbrechts-Tyteca, p. 36). From these examples, a kind of ambivalent scale is given life, with ‘conviction’ at one end and ‘persuasion’ at the other, through which, depending on the focus, convincing may be more or less valuable than persuading. And that does not simplify this classical debate.

Plantin (2016, p. 452), further distinguishing between persuading and convincing, explains that, in English, the verb *convince* is used primarily in situations where beliefs are modified, but without leading to a change of habits (or without passing to action), while the term *persuade* presupposes the passage to action, the performance of an act. The author shows that persuasion, generating a perlocutionary act, would result from the realization of the speaker’s probable intentions, which aligns with and reinforces the antagonism of the classic dichotomy we dare to question here.

Authors like Grize (1995, p. 264) draw this distinction when they state: “one may be convinced, but there is no guarantee that one has been persuaded”. In fact, this type of categorical statement is barely evident, because, after all, where are the limits between such concepts? Where/when does ‘persuasion’ begin and where/when does ‘conviction’ end? It is from this intricate opposition that we will try to propose and show another way of seeing the intersection of the idea of ‘persuasion’ with the notion of ‘conviction,’ based on the database we have developed for this research (corpus TRIBUNAL), given our dissatisfaction with the oversimplification of this theme – a theme often treated as self-evident when it is not. For our part, in the analysis presented in this paper, we will use these terms as complementary, that is, in a non-agonistic manner.

Thus, instead of struggling to understand/demonstrate the difference between ‘persuading/convincing’ or attempting to pinpoint the exact moment when someone was (or is said to have been) ‘persuaded/convinced,’ we will examine the strategic value of a word, a phrase, or an intervention in the data we will analyze. We aim to capture the moment when an interlocutor (a magistrate) *adheres* to an idea, a phrase, or a position during a deliberation in a Second-Instance moral damage judgment. This approach seems more sensible than insisting on the opposition between persuasion or conviction – terms that are often indistinguishable (Meyer, 2008a, p. 34). For Angenot (2008, p. 93), moreover, one cannot build a science by discussing an ideal form of effectiveness, persuasion, which, according to the author, occurs far less frequently than we might imagine, like he shows in his book “Dialogues de sourds”.

Our interest in this article is to analyze the moments in a legal deliberation where some form of ‘adherence’ to someone’s argumentation occurs, precisely because we

lack the means to map the cognitive pathways that lead someone (a magistrate, for instance) to change their mind when judging a case in the context of moral damage (corpus TRIBUNAL). As Posner (2008, p. 377) observes, “what leads a magistrate to adhere to a decision is often unknown.” Therefore, we will not fall into the trap of trying to guess whether a magistrate was convinced or persuaded at moment *z* of a deliberation. We leave the task of cognitive studies to linguists specializing in cognition, medical professionals, and psychologists, as they may (maybe) possess the necessary tools to address the mental processes responsible for someone’s actions, particularly because we recognize that “the reasons for an audience’s adherence to a thesis may vary” (Martineau, 2010, p. 6).

Since the burden of proof lies with those who challenge doxa, our goal is to demonstrate, based on the analysis we propose below, why it is more profitable to discuss *adhesion* rather than to keep trying to dissect poorly indigested pieces of presumable persuasion or conviction in another’s speech. But first, we need to contextualize the source of the data we will analyze, which forms part of the ‘Corpus TRIBUNAL’ database.

The ‘TRIBUNAL’ Database

The immersion in the database we have, named TRIBUNAL², primarily consists of moral damage trials that took place from 1995 to 2005 in a Brazilian Second Instance court whose identity will not be revealed in this paper³. However, regarding the corpus we present here, it consists of secondary data⁴ from judgments whose trials were all published in the form of rulings and are publicly available on the institution’s website. Regarding the deliberation process and legal ritual, we understand that each trial involves two distinct stages: Stage 1, the moment when the magistrates qualify an act (lawful or unlawful), and Stage 2, when the magistrates define the amount of moral damage (if someone has deemed an action unlawful). Already in the first stage, magistrates must decide whether, based on the criteria of the law and the evidence presented during the First-Instance judgment, the claimant has indeed suffered the alleged moral damage. If the answer is negative, that is, if the magistrates are convinced that there was no illegality in the alleged action, the judgment comes to an end, and the question of the amount will not even be addressed. However, if the answer is affirmative, that is, if

² We define the ‘TRIBUNAL database’ as the entire collection of documents gathered for this research (sentences, videos, audio, and other materials). The ‘TRIBUNAL corpus’ is a specific subset of this database that we’ve selected for the analysis presented in this paper. In other words, the *corpus* is a portion of the larger *database*.”

³ We have permission to use the *corpus*, as long as the data is made anonymous. This means that we will not disclose any personal information (like real names, case numbers, or specific dates). Access to the database has been formally granted to us, in accordance with current ethical procedures.

⁴ This means that the recordings were not made by me, the researcher, but were previously made for the sole purpose of institutional record-keeping, not for academic study. I was merely granted permission to access the database and use the data that were relevant to my research.

the magistrates consider an unlawful act to be present, then the second stage of the judgment begins and the session must determine the amount that will be paid (the moral damage), commonly known as *pretium doloris* (the price of pain).

For many jurists, the moment of determining the amount to be paid is considered the “Achilles’ heel” of the Judiciary, given the uncertainties and difficulties of quantifying the illegality of an action in this context of moral damage (Teodoro Júnior, 2007, p. 43). This, incidentally, indicates that the study of moral damage has been a topic of interest in the legal world since the promulgation of the 1988 Constitution (Coelho, 2009; Cianci, 2003; Oliveira, 2006; Reis, 2010; Leite, 2002), when such cases began to be arbitrated.

In the court, hearings are generally public, except in cases under judicial secrecy (to which we do not have access). Depending on the nature of the case, a deliberation always involves at least three magistrates. At the beginning of each deliberation, the Reporting Magistrate (hereafter Rep) presents their vote (prepared before the session); however, as the debate progresses, nothing prevents him from changing his decision orally. The “product” of the deliberation is called a ruling, a type of sentence. The role of the magistrate acting as the reporter is primarily to examine the case thoroughly and take a position on the facts – either opposing or supporting the decision made by the First-Instance magistrate. They also need to justify their choices, that is, they need to argue to support their position.

After the vote of the Reporting Magistrate (Rep), the First Assessor (A1) will be the second to reveal his vote. In this way, A1 will agree or disagree with the vote cast by Rep. The third judge, or the Second Assessor (A2), who generally does not know the case in detail, will vote based on the debate between Rep and A1, which takes place before his eyes. A2 will then be the last to cast his vote, and the result of the deliberation will be announced by the session’s president (Rep). This is, in a very schematic way, how Second Instance Court judgments take place between Rep, A1, and A2. We will return to this when presenting the analysis through which we will describe how *adhesion* to a standpoint occurs at a deliberation table.

Marks of the adhesion process

As stated, in describing the data presented here, and for the reasons previously explained, we deem it appropriate to treat the terms *persuasion* and *conviction* as equivalent, avoiding the naturalized and confusing dichotomy problematized earlier. Our interest lies in the marks and manifestations of *adhesion* to a standpoint, a vote, during the moments of interaction between the magistrates, especially in moments of conflict of opinions at a deliberation table. From the perspective of the Dialogical Model of Argumentation (Plantin, 2008, 2016; Damasceno-Morais, 2023b), henceforth DMA, we will refer to *stasis* when there is a divergence of standpoints in a heated debate “à

vif et à chaud” (Cornu, 2005, p. 252), that is, “in the heat of the moment,” in the thread of an argumentative interaction.

Our goal is to identify textual marks that indicate the resolution of a stasis (Plantin, 2016, p. 548), that is, a conflict of opinions, when one magistrate adheres to the propositions of a deliberating colleague. Thus, based on the construction of dialectical and argumentative reasoning between interactants, we aim not only to highlight the marks of adherence present in moments of stasis but also to go beyond merely cataloging the frequent “I agree!” often repeated by magistrates in the TRIBUNAL corpus. This phrase exemplifies the most automatic way a magistrate aligns with another’s opinion, particularly because “we generally speak to exert influence” (Ducrot; Anscombre, 1983, p. 7).

We will therefore examine excerpts where one speaker’s statements are extended or reappropriated by another speaker as a form of argumentative alignment (Plantin, 2016, p. 45). The New Rhetoric has already paved the way for this type of analysis, since, as we know, the objective of Perelman and Olbrechts-Tyteca (2008) was to closely observe the reciprocal influence a speaker exerted over their audience in the dynamics of persuasive discourse. However, we disagree with how these authors endorsed the dichotomy persuasion vs. conviction.

It is important to note that magistrates in Second Instance do not always aim to openly influence their colleagues. However, in our observation of the available database, we noticed that whenever possible, the Second Instance panel seeks unanimity in votes to demonstrate the cohesion of the Chamber. While such moments of judgment lack a “confessed argumentative intent” from each magistrate (Amossy, 2000, p. 226), a unanimous vote rather than a majority vote effectively reflects the strength of the final decision by the judging chamber and, consequently, the legal and argumentative alignment of the collegiate body in deliberation.

Nevertheless, if a judgment is concluded by a majority vote (as opposed to unanimity), it means that a conflict of opinions (argumentative stasis) remains unresolved, even if a verdict has been reached, thus characterizing an agonistic situation that generates a stasic situation⁵ (Damasceno-Morais, 2023a, p. 31).

The phenomenon of “argumentative assimilation,” which we will describe and present below, is a form of argumentative adherence among magistrates at a deliberation table. The term “assimilation,” as used in this work to represent the outcome of an adherence process, is a prolific term because it is used in various fields to indicate numerous processes/phenomena in areas such as Physiology, Sociology, and Philosophy⁶, to name just a few.

⁵ According to Damasceno-Morais, a ‘stasic situation’ go beyond the occurrence of a stasis. Instead of focusing only on the initial moment of the conflict (*stasis*), the analysis of a stasic situation seeks to understand how the reaction to an initial attack can shape the entire conflictual interaction.”

⁶ Michaelis Electronic Dictionary presents four fields that utilize the term “assimilation”: 1) PHYSIOLOGY. Transformation of food into energy or bodily tissue; appropriation of others’ ideas and feelings, grasping their meaning and incorporating them into one’s own knowledge. 2) LINGUISTICS. Alteration of a sound, most often a consonant, to make it identical or more similar to a neighboring sound. 3) SOCIOLOGY. Process of interpenetration and fusion

Here, “assimilation” is described as a type of positive amalgam being the result of the fusion of two interactants’ speeches, unlike the “amalgam” discussed by Doury (2003), which is synonymous with “confusion of ideas,” a kind to mixing “apples and oranges” or even a ‘sophism’ – a biased and fallacious mixing of subjects to confuse the interlocutor. However, in the description and analysis presented below, we will show how “assimilation/amalgam” is closer to the irenic (peaceful) side than the agonistic (conflictual) side, in Kerbrat-Orecchioni’s terms (1992, p. 36). This perspective underscores the importance of such a phenomenon in argumentation studies, as proclaimed by the New Rhetoric when authors discuss the “adhesion of spirits “to a thesis (Perelman; Olbrechts-Tyteca, 2008, p. 5).

Description of the argumentative assimilation process

In the TRIBUNAL corpus, the principle of *adhesion* is quite fundamental, as we will outline below. After multiple reviews of recorded Second Instance judgments (Damasceno-Morais, 2021), we noticed that throughout some deliberations, *stasis* was not resolved by the simple and classic assertion of agreement among interactants, often represented by the expression “I agree!” The exploration of the TRIBUNAL database revealed that assent/alignment, at times, was expressed differently – through a form of reappropriation of arguments by one interlocutor from another, during moments of opinion conflict. This reappropriation acted as a “perlocutionary effect” (Austin, 1970, p. 129), resulting from a preceding action and serving as the output of the *adherence process*. The agreement pronounced by one of the interactants was the result of arguments being appropriated – a form of resumption or even absorption of the other’s words.

The argumentative assimilation process has characteristics of a negotiation process, intertwined with “adjustment mechanisms” (Kerbrat-Orecchioni, 2011, p. 92) or “micro-adjustments” (Plantin, 2016, p. 207) during overlapping turns of speech. At the deliberation table, we observe a “change in the disposition of the interlocutors” (Nettel, 2011, p. 1359), characteristic of the persuasion process, which does not necessarily happen in a negotiation process. During the assimilation process, the interlocutor/magistrate “persuaded/convinced” will end up succumbing to the arguments of whom they previously disagreed with. This type of argumentative relationship is organized into four movements:

of cultures, that is, of traditions, feelings, attitudes of people and groups who, sharing the same experience and history, are incorporated into a common cultural life. 4) PHILOSOPHY. Operation by which the different is transformed into the similar. May 2024.

Table 1 – Outline of the steps in the argumentative assimilation

- **1st movement:** the magistrate X presents their vote with justifications and arguments. Magistrate X introduces his/her position on the case, presenting the legal and jurisprudential grounds that support their decision. At this moment, an initial standpoint is presented.
- **2nd movement:** the magistrate Y does not immediately accept the arguments presented by X. A momentary *stasis* arises between interactants X and Y. Magistrate Y disagrees, totally or partially, with the arguments presented by X, establishing a point of divergence (stasis) in the deliberative table.
- **3rd movement:** Y hesitates and makes minor adjustments when resuming the arguments presented by X. At this moment, a conflictual process is observed, in which Y seems to adapt X's arguments to his/her own perspective.
- **4th movement:** there is a change in Y's disposition, and this interactant ends up repeating the arguments (words, phrases) pronounced by X, thus characterizing the culmination (outcome) of the argumentative assimilation process. At the end of this debate, Y demonstrates having incorporated X's arguments, using some words and expressions pronounced by X. This adherence to the other's arguments marks the end of adhesion that we call *assimilation process*.

Source: Own elaboration

In mathematics and logic, one of the most used schemes for representing spatial relationships is the Venn diagram⁷, which can be employed to organize and visualize relations among events. We draw on this idea to illustrate the moment when the opponent's speech aligns with the proponent's. For that, we present some figures, in a schematic presentation, to describe the interactive-argumentative process that represents what we call *assimilation* in the deliberation table among REP, A1, and A2:

Figure 1 – Representation of the Deliberation Table in Second Instance



Source: Own elaboration

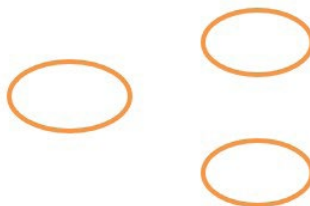
⁷ *Venn diagrams* are used in mathematics to graphically symbolize properties, axioms, and problems related to sets and set theory. Available at https://pt.wikipedia.org/wiki/Diagrama_de_Venn. Accessed on May 29, 2024.

In Figure 1, the single lines connecting the interactants represent the standard connection among the panel members (REP, A1, A2), where magistrates exchange opinions without significant conflict or sharp opposition of viewpoints. In the TRIBUNAL corpus, some cases feature a wavy line connecting interactants, indicating a more pronounced statistic, with conflicting argumentation and difficulty in adherence among members' opinions during debate. If two lines connect interactants (not even one), we consider the stasis irreversible, that is, X does not agree with Y at all. It is also important to remember that, in Second Instance trials, the magistrates are reviewing a sentence previously given by a First Instance judge (FIJ) and contested by one of the parties in the process (plaintiff or defendant). For understanding argumentative assimilation as described, we rely on the base scheme represented by Figure 1.

The adherence process, whose *assimilation* is a product, only seems to make sense when it occurs in a face-to-face interaction situation. It is precisely due to this characteristic that we do consider assimilation an argumentative and interactive process. Therefore, we will not represent, in Figure 1, the role of the FIJ (First Instance judge), since this magistrate does not participate in the Second Instance trial, that is, this magistrate is absent from the deliberation table we analyze here. As we will show, in illustrating argumentative assimilation, we are interested only in the face-to-face argumentation process, constructed directly, in the heat of the moment (*à vif et à chaud*), among Rep, A1, A2.

Assimilation only happens in moments of stasis (reversible or irreversible). There wouldn't be much sense in speaking of argumentative assimilation in the situation depicted here if all the magistrates agreed with each other (argumentative alignment situation), that is, a non-stasis or non-agonal, irenic situation. A minimum level of conflict is necessary for one magistrate to attempt to persuade another to adhere to a thesis. In Figure 2, we omit the identifiers within each circle to simplify the illustration of the argumentative assimilation process:

Figure 2 – Representation of the positioning of interactants in deliberation table

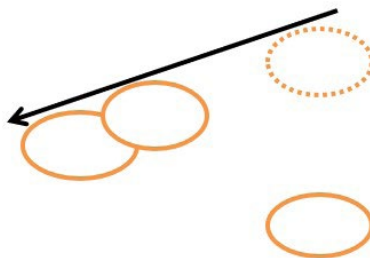


Source: Own elaboration

During the argumentative and interactive flow at the deliberation table in the Second Instance, as debates, negotiations, and spontaneous adjustment mechanisms occur in face-to-face interaction, magistrate Y ends up yielding (adhering) to the arguments/

justifications presented by magistrate X (Table 1). This represents the moment of “absorption” of X’s arguments by Y’s. Figure 3 below seeks to describe the suppression of stasis between magistrate X and magistrate Y, since Y, initially recalcitrant, ends up capitulating and yielding to X’s argumentation. Thus, Y adheres to X’s discourse to such an extent that Y ends up repeating words uttered by X during the debate, which indicates Y’s adherence to X’s arguments. Let’s see this representation in Figure 3:

Figure 3 – Suppression of argumentative stasis

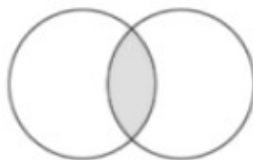


Source: Own elaboration

As we can see in Figure 3 above, we describe the moment of alignment of two antagonistic discourses. The arrow aims to show the direction of such alignment at a table that initially featured the struggle between the proponent’s and the opponent’s speeches (in DMA terms). The idea of movement represented there is important because we have been talking about a deliberation table where, through adjustment mechanisms, everything is very dynamic, with overlaps of speech, interrupted speeches, incomplete speech turns, voice tone changes, which certainly contribute to the interactional effervescence of the moment, typical of face-to-face interactions at deliberation tables. In short, the moving arrow illustrates the moment when one magistrate “moves” toward the argumentative position of another magistrate.

To conclude the description of the argumentative-interactive phenomenon manifested in the TRIBUNAL corpus, we present in Figure 4 the culmination (output) of what we have been calling *argumentative assimilation*, which represents the moment when two recalcitrant, antagonistic discourses begin to represent an argumentative alignment, resulting from an opponent’s adherence to a proponent’s arguments.

Figure 4 – Argumentative Assimilation Process



Source: Own elaboration

We can observe, in this description of the phenomenon of assimilation, “traces of performativity” (Austin, 1970, p. 99), since at the debate table, one magistrate’s speech is always susceptible to the reaction of another colleague. Even though we are not talking about a classic performative action like ‘telling a joke → laughing,’ we frequently observe in the TRIBUNAL database this movement of Y towards X during a deliberation (or vice versa). In this context, the reappropriation of an opponent’s words and arguments by a proponent, marked by argumentative alignment, is an effect of *adherence* rather than mere resonance – precisely because it is not a matter of a trivial disagreement but rather the construction of a standpoint and a justified and argued position, within the “interactional dynamic” (Plantin; Doury, 2015, p. 10).

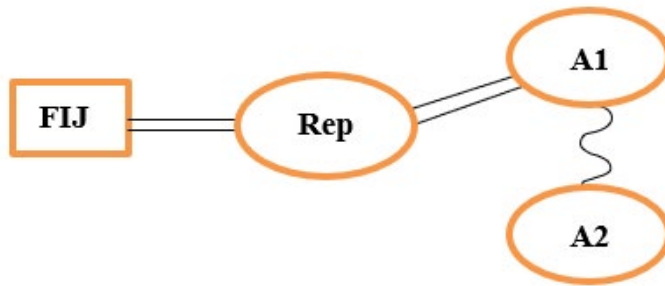
Having described what we identify as an interactional and argumentative phenomenon, that is, *argumentative assimilation*, we proceed to the analysis of a judgment coming from the TRIBUNAL corpus.

The Case of the (non)existence of a retirement contract

The following case study examines a civil judgment in which it was determined that the unilateral alteration of a private pension contract – converting it into a life insurance policy without proper communication to the stakeholders – resulted in moral damages (Reis, 2010, p. 9). Although it is a case of contractual breach, which, as a rule, would not generate moral damages according to jurists, the harm caused would have gone beyond mere discomfort or displeasure, since the contracting party paid for a long period what she believed to be a private pension plan and, at the time of retirement, she saw her expectation of receiving financial supplementation of her income frustrated.

In this judgment, which lasted 15 minutes and 55 seconds, there were several persistent disagreements stemming from the argumentative question: Does the insurer’s behavior constitute moral damage? The attitudes and divergent responses to this question give life to the stasis situation illustrated below:

Figure 5 – Stasis situation at the deliberation table



Source: Own elaboration

Figure 5 highlights several aspects that can be analyzed from an interactional and agonistic perspective, as well as concerning the personal positioning of the magistrates (FIJ, Rep, A1, A2) in defense of their standpoints. This creates an environment of argumentative interaction, *à vif et à chaud*, among the magistrates. To begin, it is important to note that FIJ represents the First Instance Judge, who is not present at the deliberation table. For this reason, his representation is shown as a rectangle, rather than an oval shape.

In the composition of the *stasis situation* presented at the deliberation table (Figure 5), we observe that the double lines indicate an irreversible stasis between FIJ and Rep, as well as between Rep and A1. The wavy line represents a temporary (reversible) stasis followed by a negotiation between the standpoint expressed by A1 (who agrees with FIJ that there was moral damage but disagrees with the amount of R\$100,000 sentenced by FIJ, proposing instead a value of R\$20,000 as moral damage) and the standpoint that will be expressed by A2 (who has not yet declared to whom he will be aligned with, that is, Rep, A1, or FIJ).

Despite presenting only two excerpts (Excerpt 1 and Excerpt 2) of the judgment regarding the (non)existence of a private retirement contract⁸, it is important to note that we are proposing a longitudinal cut of the data (Traverso, 2007, p. 27), since we will look at an entire interaction, from beginning to end, to better understand the multiple kinds of stasis that compose that interactional framework⁹. We do not present the complete transcription merely due to space constraints¹⁰, even if we present the Portuguese version after the English/translated text. Let us proceed to the first excerpt:

⁸ The title 'The Case of the (non)existence of a retirement contract' is fictitious. We coined this term for the sole purpose of easily referring to this specific judgment throughout our analysis.

⁹ As Traverso (2007, p. 26) states, '*transversal analysis* involves studying a specific phenomenon across different instances (interactions) within the same dataset, with the goal of answering a broader research question [...] *longitudinal analysis* seeks to account for an interaction in a single sequence, at one moment, considering its beginning, middle, and end.

¹⁰ **Transcription conventions:** / upward intonation, \ downward intonation, (.) short pause, (..) medium pause, (...) long pause, (0.6) pause described in seconds, [] overlapping speech, xxx inaudible section, ((laughter)) description of

Table 2 – Excerpt_1 from the TRIBUNAL Corpus (lines 16 to 75/127 to 129)

16	A2	&I don't know the vote of the judge ((name of the judge)) (that)
17		because at first when your honor had already spoken about moral damage
18		I was thinking here as well °right°&
19	A1	&uh [I'm considering&
20	Rep	[contractual matt:er °right°]
21	A1	&<((low and hesitant tone)) I have I-I-I'm not I
22		[disagree you see/>
23	Rep	[it seems the amount they wanted to pay was still
24		too low let's see
25	A2	your honor is keep:ing the amount of the moral damage judge
26		((name the judge))/
27	A1	I am keeping the amount but I'm [reducing the value the court had defined
28		before=
29	?	[xxxx xxxxx xxxxxxxx xxxxx
30	A1	=to one hundred thousand reais right/&
31	A2	&judge ((name of the judge)) [removes and °your honor°]&
32	A1	[I'm reducing it to twenty
33		thousand reais, there is a peculiarity here (.) the plaintiff
34		paid contributions during thirty years, she made monthly contributions (.)
35		and only later she was never informed about the cancellation of her pension
36		plan (.)
37		she paid during thirty years and was never notified
38		as the deductions were regularly made
39		from her paycheck (.) and so I understand, just imagine/
40		she is paying during thirty years for a pension plan and
41		when she needed that plan they say she doesn't have that pension\
42	A2	and the moral damage then your hohor-honor has interpreted
43		like had been interpreted in the first instance judge right:
44	A1	uh-huh: I understand there is moral damage in that situation&
45	A2	&that would be xxx eh: let's put it this way [this unpleasant surprise=
46	A1	[yes
47	A2	=a very unpleasant [one
48	A1	[uh-huh:/ there's no xxx I think it's a
49		[more serious matter
50	A2	[yes yes, just to better understand the situation (.) your honor ((name of the
51		judge))
52		you don't think it's a moral damage your honor/
53	Rep	uh-huh I usually understand like that in contractual matters my
54		opinion is this\ certainly there is a right to to mate[rial damages
55		no doubt about that=
56	A2	[uh-huh ok about that
57		that is clear right\
58	Rep	=and if they're trying to pay LESS than what's due

situation, () uncertainty in transcription, & no interval between two turns of speech, = continuation of the same turn of speech, XXxx emphasis, : prolonged pronunciation, - interruption, ° ° soft voice, <(()) translator's comment>, # # accelerated speech. These conventions are based on those adopted by the ICAR laboratory – Interactions, Corpus, Apprentissages, Représentations, linked to the Université Lumière Lyon 2/France.

59		that really must be corrected so everything
60		must be repaid in terms of material damages now in contractual
61		matters moral damage for me is very diffi[cult to consider in this case=
62	A2	[uh-huh
63	Rep	=even if:\ there is much dissatisfaction, right\&
64	A2	&uh-huh
65	Rep	bu:t she was inform[ed: right\
66	A1	[uh when she requested retirement
67		the payment was refused you don't have it anymore they #deduced# it
68		they had been withdrawing it for thirty years and then said no now
69		you don't have it because rules have changed (.) but they have never
70		communicated
71		they have never notified her about changing rules
72	A2	and these changings in the contract rules your honor
73		(=name of the judge) it had occurred a long time ago right\&
74	A1	&it was [a long time ago
75	A2	[she paid unnecessarily for a long time correct\
	A1	THIRTY YEARS/
127	A2	those thirty years [of payments were improper right/&
128	A1	[uh-huh definitely
129	A1	&uh-huh
		(...)
	A1	=someone who had been paying for THIRTY YEARS without being consulted\ I think we have considered moral damages for much less here I think this here is a considerably greater moral damage\

16	V2	&eu não sei a posição da desembargadora ((identificação)) (por)
17		que em princípio quando vossa excelência já falou em dano moral
18		eu já fiquei aqui pensando também °ne°&
19	V1	&eh [eu to dando&
20	REL	[matéria contratua:l °ne:°
21	V1	& <((tom baixo e titubeante)) eu tem uma e-e-eu eu tô
22		[divergindo viu/>
23	REL	[parece que o valor que queria pagar achou que era que ainda era
24		pequeno vamos ver
25	V2	vossa excelência está man:tendo dano moral desembargadora
26		((identificação)) /
27	V1	eu tô mantendo eu estou [reduzindo que a juíza fixou=
28	?	[xxxx xxxxx xxxxxxxx xxxxx
29	V1	=em cem mil reais né/&
30	V2	&desembargador ((identificação)) [retira e °vossa excelência°
31	V1	[eu estou reduzindo para vinte
32		mil reais u-u-u- ca:so aqui tem uma particularidade (.) a autora
33		pagou durante tri:nta anos ela realizou contribuições menSAIS é
34		só depois e-e jamais foi avisada do cancelamento do seu plano de
35		previdência (.) pagou trinta anos nunca foi avisada encontrando-
36		se tranquila porquanto os descontos eram realizados de forma
37		regular em sua folha de pagamento (.) aí e-e-então eu entendo já

38		pensou/ pagar trinta anos um plano de previdência pra no final
39		dizer que você não tem essa previdência\
40	V2	e o dano moral então que vossa intenência-excelência entendeu
41		presente como a juíza eh:
42	V1	eh: eu entendo presente um dano moral&
43	V2	&que seria xxx eh: vamos tratar assim [essa surpresa=
44	V1	[eh
45	V2	=desagradável es[se
46	V1	[eh:/ não tem xxx eu acho que é uma
47		[coisa mais séria
48	V2	[sim sim só pra eu entender (.) desembargador ((identificação))
49		acha que não não é desembargador/
50	REL	eh eu estou entendendo normalmente em matéria contratual meu
51		posicionamento é esse\ tem direito sim a a danos materi[ais isso
52		aí sem sombra de dúvidas=
53	V2	[sim isso
54		aí estamos neh\
55	REL	=e isso aí se estiver querendo pagar AQUÉM: né daquilo que é: né
56		de direi:to deve-se ser-corrigir realmente para que tudo seja
57		reposto em termos de danos MATERIAIS agora matéria contratual
58		dano mora:l para mim fica mu:ito difi:[cil=
59	V2	[eh
60	REL	=ainda que:\ eh haja muito dissabor ne&
61	V2	&eh
62	REL	ma:s foi informa:[da ne
63	V1	[eh na hora que requer a aposentadoria a
64		complementação vem e diz não você não tem mas #desconta# na
65		conta dela durante trinta anos e depois diz não agora não tem
66		porque mudaram as regras (.) mas nunca comunica:ram não
67		avisa:ram que havia mudanças
68	V2	e essas mudanças que ela já não tinha desembargadora
69		((identificação)) e era uma coisa antiga já/&
70	V1	&era [antiga
71	V2	[ela pagou indevidamente durante muito tempo/
72	V1	TRINTA ANOS/
73	V2	os trinta anos [de recolhimento foram indevidos/&
74	V1	[eh
75	V1	&eh
	(...)	
127	V1	=a pessoa que paga TRINTA ANOS sem ser consultada\ eu acho que
128		nós temos dado DANO MORAL por coisas muito menores eu acho que
129		isso aqui é um dano moral muito grande\

Source: Own elaboration

In Excerpt 1 (Table 2), amidst overlapping, interrupted, and fragmented statements at the first moment of the deliberation - that is, the stage of qualifying an act (whether lawful or unlawful) – a more persistent disagreement arises, as represented by the

double lines in Figure 5, between the vote of the Rapporteur (Rep) and the decision of the First Instance Judge (FIJ). According to the Rep, there is no legal support to consider the existence of moral damages in cases of contractual changes (l. 50-52). Rep's opposing vote was that mere contractual non-compliance, by itself, does not warrant compensation for moral damages, since the compensable moral damage is that capable of causing an abnormal offense to the personality (l. 55-58). Conversely, the FIJ not only recognized the existence of moral damage but also ordered the insurance company to pay R\$ 100,000 to the plaintiff. While presenting his vote, Rep agrees with the existence of material damage (lines 55-58) but claims the absence of moral damage, thus disagreeing about the payment proposed by FIJ (R\$ 100,000). This is the first, irreversible stasis, as illustrated by the double lines between the FIJ and the Rep (Figure 5).

Next, when presenting his argument, the second magistrate (A1) declares his vote. This judge (A1) shows resistance (stasis) to Rep's standpoint (l. 21-22, 42, 46-47, 128-129). In this regard, A1 agrees with FIJ based on his argumentation that there was moral damage in the insurance company's conduct (he disagrees with REL, who does not identify any unlawfulness in the insurance company's action), but provokes a new stasis by disagreeing with the amount proposed by FIJ, suggesting, then, a reduction in the amount of moral damages from R\$ 100,000 (as proposed by FIJ) to R\$ 20,000 (l. 27, 29, 31-32).

Thus, from the perspective of the DMA¹¹, Rep initially occupies the actantial role of proponent (suggesting that the case should not be qualified as moral damage). In response to Rep's proposition, A1 not only assumes the actantial function of opponent (as he disagrees with him) but also assumes the actantial role of proponent, because he presents a new thesis, that is, the payment of R\$ 20,000 (instead of R\$ 100,000), as we observe in lines 31-32.

Regarding the actantial role of A2, this judge acts as a third arbiter (Damasceno-Morais, 2022, p. 19), as he embodies the discourse of one who has a doubt - one who intends to form a judgment to position himself throughout his performance (l. 16-18) - although, as we will see below, this magistrate (A2) ends up adhering to A1's position. This is the general *stasis situation* presented in this scenario.

Before analyzing what we are calling the *argumentative assimilation*, we need to highlight the main argument used by A1 disagreeing with Rep's standpoint. A1 emphatically repeats that the plaintiff had been paying for a retirement plan during "THIRTY YEARS" (l. 33, 35, 38, 65, 72, 127) without being informed that there was no more contract (l. 33-39, 66-67, 127-129). This constitutes A1's principal argument against Rep's standpoint, which considers (Rep) that the case in deliberation table involves only material damage (and not moral damage). For A1's interpretation about moral damages in Brazil, however, these "thirty years" of undue payment "without prior notice" (l. 34, 35, 66, 67, 71) justify the presence of unlawfulness in the insurance

¹¹ In DMA, an 'actantial role' corresponds to the position assumed in an interaction: proponent, opponent, or third party.

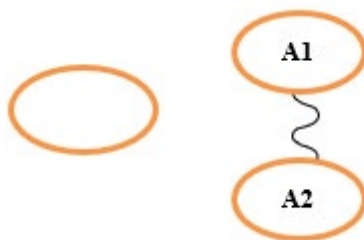
company's action, thus, for this magistrate, there is the characterization of material damage (l. 51) and also moral damage (l. 42).

Undoubtedly, this is a case that did not achieve unanimity among the judges, since the sentence was decided by a majority vote, that is, a “partial provision” (l. 276), and not unanimously: A1 + A2 vs. Rep's standpoint.

Analysis of the argumentative assimilation process

From now on, we will not focus on Rep's position, because this judge presented a non-negotiable standpoint from the moment his vote was proclaimed, given that, as we mentioned, he disagrees that there was moral damage in the insurance company's attitude. In this sense, Rep turns his back on A1's arguments and shows no concern with the standpoint that will be presented by A2. For these reasons, our interest lies solely in examining the interaction between A1 and A2, because the process of argumentative assimilation will occur within the interaction between these two judges. To highlight the process of argumentative assimilation, we will erase Rep from the analysis, concentrating on the stasis between A1 and A2, as we try to illustrate in Figure 6 below:

Figure 6 – Representation of the stasis between A1 and A2



Source: Own elaboration

When A2 begins to show signs of tending to agree with A1 and not with Rep, the marks of this alignment/adhesion to the other point of view will occur through what we call here the argumentative assimilation process. The exchanges of turns, overlaps of speech, interrupted speeches through various intersections of turns between these magistrates are not innocuous actions. They are, in fact, integral parts of a negotiation process carried out *à vif et à chaud*, that is, in the heat and immediacy of the interaction, as we try to illustrate in Table 3/Excerpt 2 below:

Table 3 – Excerpt 2 from the TRIBUNAL Corpus (lines 190 to 241 / 273 to 277)

190	A2	as for me, I'm ready to vote\
191	A1	uh-huh&
192	A2	when your honor has spoken about the moral damages of one hundred thou-
193		sand
194		reais I thought (.) because I was thinking I have the same
195		position of your honor I don't consider in a contractual matter
196		that kind of payment that kind of compensation I even think xxxxx in cases
197		of insurance companies I consider this case an exception
198		the possibility&
199	A1	& it's an exce[ption
200	A2	[that's why I ask your honor into the most respectful deference
201		because I think IN TH:IS specific case without breaking
202		the rule in contractual affairs it doesn't justify moral damages in
203		THIS particular case given the circumstances of accepting money
204		for THIRTY YEA:RS and creating the expectation
205		of a possible retirement\ in this PARTICULAR case
206		without implying that I'm BREAKING my understanding of its inadmissi-
207		bility
208		I respectfully ASK your honor to follow
209		the judge's opinion\ even more so because if
210		we were paying one hundred reais I would be
211		disagreeing with the judge but as the respectful judge reduced reduced
212		the amount she reduced it to [twenty thousand reais=
213	A1	[xxxx twenty thousand
214	A2	=it seems xxxx [that xxxx xxxx
215	A1	[I understand that the contract (no longer exists) the contract
216		doesn't doesn't it ceased to exist=
217	A2	[°right°
218	A1	= in the way it was (agreed up[on)
219	A2	[I understand as your honor says
220		it no longer exists and:: [the other side=
221	A1	[uh-huh
222	A2	=the contracted party [((stuttering)) let believe=
223	A1	[uh-huh
224	A2	=that during thirty [years the contracting party believed that=
225	A1	[uh-huh
226	A2	= the contract existed because they were deducting [the amount=
227	A1	[uh-huh
228	A2	=month after month [I find it a bit xxxx the judge=
229	A1	[uh-huh
230	A2	=((name of the judge)) has a point when it comes to insurance companies
231		it's a bit diff[erent that xxxxxx=
232	A1	[right
233	A2	=it has been mon[ths in that discussion=
234	A1	[uh-huh
235	A2	=and not thir:ty years that's why once again asking for deference to judge
236		((name of the judge)), whose competence in rulings I always recognize
237		your honor knows that but in this specific case I respectfully a[sk to agree

238	with the first assessor magistrate
239	A1 [well
240	A1 and xxxx well see the honorable first instance judge
241	acted correctly when declaring the contract's nonexistence
273	because it cease:d to exist when it was first cancelled when things changed
274	right\
274	the contract no longer existed
275	(...)
276	Rep &I will proclaim the result (..) It's partially overruled right\
277	because regarding material damages it effectively occurred (.) uh-huh
	agreement isn't that right\ your honor\&
	A1 &uh my decision [is partial your honor in the xxx=
	A2 [it's partial

190	V2 quanto a mim eu estou apto a votar\
191	V1 humhum&
192	V2 &quando vossa excelência falou e disse do dano moral dos cem mil
193	reais eu já olhei (.) porque fiquei pensando porque tem a mes:ma
194	posição de vossa excelência não vejo como em relação contratual
195	se dar se dar se ã:h ressarcimento por dano moral tanto que
196	penso xxxxx em seguradoras TEnho a questão da exceção da
197	possibilidade&
198	V1 &é uma exce[ção
199	V2 [é por isso que eu peço as mais respeitosas venias a
200	vossa excelência que acho que NES:TE caso concreto sem quebrar
201	se a regra de que relação processual contratual não dá dano
202	NESTE caso pela circunstância de que durante TRIN:TA A:NOS se
203	aceita o dinheiro durante TRIN:TA ANOS se aceita- se cria
204	expectativa da possibilidade da aposentadoria\ neste caso EM
205	PARTICULAR sem imaginar que eu esteja QUEBRANDO o entendimen-
206	to
207	que tenha do descabimento é que eu PEÇO as mais respeitosas
208	venias a vossa excelência para acompanhar a desembargadora\ até
209	porque se nós estivéssemos pagando cem mil reais eu estaria
210	discordando da desembargadora mas a desembargadora desceu desceu
211	pros [vinte mil reais=
212	V1 [xxxx vinte mil
213	V2 =me parece xxxx [que xxxx xxxx
214	V1 [eu entendo que (ainda inexistente) aquele contrato
215	num num ele deixou de existir=
216	V2 [°ta°
217	V1 =na forma como (pactu[ado)
218	V2 [eu estou ven:do como diz vossa excelência
219	ele deixou de existir e:: [a parte=
220	V1 [eh:
221	V2 =contratada [((gagueja algo)) dei:xa=
222	V1 [eh

223	V2	=que durante trin:ta [anos a contratante acredite que=
224	V1	[eh
225	V2	=o contrato existia porque fazia [o desconto=
226	V1	[eh
227	V2	=mês a mês [acho um pouco xxxxx o desembargador=
228	V1	[eh
229	V2	=((identificação)) tem razão quando se fala da seguradoras é um
230		pouco diferen:te [que xxxxxx=
231	V1	[eh
232	V2	=já tem me:ses ali [naquela discussão=
233	V1	[eh
234	V2	=e não trin:ta anos é por isso que mais uma vez rogando venia ao
235		desembargador ((identificação)) a quem sempre reconheço o
236		brilhantismo dos votos ele sabe disso\ mas nesse caso concreto
237		pe[ço venia para acompanhar a revisora\
238	V1	[bem
239	V1	e xxxx bem veja bem o meretíssimo magistrado de primeiro grau
240		ele andou bem quando ele declarou a inexistência do contrato
241		porque ele deixou de existir na época em que houve essa mudança
		tão drástica né ele não existia mais o contrato
273	(...)	
274	REL	&eu vou proclamar o resultado (..) ta vencido em parte ne
275		porque os danos materiais houve (.) eh concordância não é
276		eminência/&
277	V1	&eh o meu provimento [é parcial excelência no xxx=
	V2	[é parcial

Source: Own elaboration

From the moment A2 says he is ready to vote (l.190), we'd like to highlight the speech turns that show the alignment of A1 and A2. In this sense, A1 seizes the opportunity to demonstrate his enthusiasm for the direction A2's argumentation is taking. By repeating the phrase "it's an exception" (l. 198), previously stated by A2 just some seconds earlier (l. 196), we witness the beginning of a process of adhesion to another point of view. In fact, A1's interrupted and peremptory interventions ("uh-huh") overlapping A2's speech (l. 221, 223, 225, 227, 230, 232) help us better describe the process of adherence and argumentative alignment, through marks that will be useful for understanding the assimilation process.

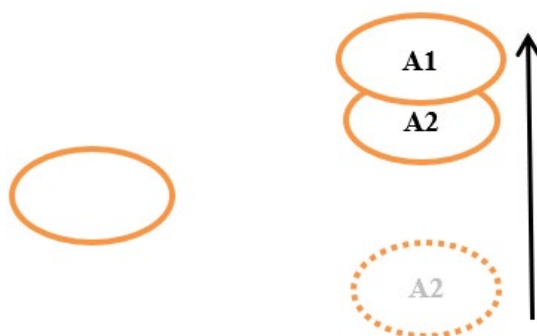
The turns of speech highlighted above help us to evidence a process of absorption and "digestion" (by A2) of the arguments used by A1. Indeed, this literal reiteration of A1's arguments by A2 indicates a "desire for sharing" (Vignaux, 1995, p. 199) in a situation of argumentative alignment, which help us to illustrate the argumentative assimilation process. We know, after all, that no one adheres to a standpoint by chance; there are always stages of approaching in the argumentative adherence process. In Excerpt 2, we see that A2 moves closer to A1's arguments by reiterating interrupted

statements and arguments made by that judge, thereby distancing himself from the perspective adopted by Rep.

As mentioned, as the debate progresses, A2 does not miss the opportunity to manifest his adhesion to A1's speech, which contributes to the process of appropriation of A1's words by A2. According to Perelman and Olbrechts-Tyteca (2008, p. 177), "language is not merely a means of communication; it is also an instrument of action on the minds." Indeed, the exchanges between the interactants A1 and A2 are interspersed with micro-adjustments and/or adjustment mechanisms that generate a perlocutionary effect in A2's speech (the immediate repetition of words spoken by A1), in the heat of the interaction.

In Excerpt 2, we also observe that, starting from line 195, A2's hesitations and occasional divergences from A1's standpoint gradually has been fading away, which illustrates a kind of *argumentative footing*¹² in a process of absorbing another's words in an argumentative interaction. The wavy line (Figure 6) that represented the "distance" in that "rhetorical relationship" (Meyer, 2008b, p. 9) between these two judges eventually ends up disappearing, as we illustrate in Figure 7 below:

Figure 7 – Beginning of the absorption/assimilation process



Source: Own elaboration

Figure 7 captures the moment when the barriers between standpoints begin to disappear (wavy line/simple stasis), before V2 literally repeats V1's words, expressing his adherence to the thesis defended by V1. At this moment, the process we have been calling *argumentative assimilation* (previously described in Table 1) effectively takes place, as A2, spontaneously, somewhat impulsively, dynamically, and finally firmly (after hesitation/wavy lines) resumes/digests the words used by A1, that is, the same arguments used moments earlier by A1, indicating that he has "absorbed" the other's

¹² I draw inspiration from Goffman's concept of *footing* (Goffman, 1979), which roughly means a shift in someone's position, a change in the attitude we have towards ourselves and others present, as it is expressed in the way we handle the production or reception of an utterance.

arguments, aligning himself with it and setting aside any possibility of agreeing with REL as we can observe in lines 199-201, 206-207 and 233-236.

From the perspective of the DMA, in the process of aligning with A1, A2 abandons the actantial role of the third party and, at the same time, affirms his position as an opponent to Rep. In the following speech turns, A2 will literally repeat A1’s words, demonstrating total argumentative alignment, the result of adopting another’s arguments (in this case, A1’s standpoint). In Table 4 below, we schematize the textual marks of the process of argumentative assimilation that arises from adjustment mechanisms between two interactants (A1 and A2) during an interaction within a judicial deliberation:

Table 4 – Textual marks of the argumentative assimilation process

The argumentative assimilation process (A2 → A1)	
1. 68 (Ex_1)	“and these changings in the contract rules your honor” “e essas mudanças que ela já não tinha desembargadora”
1. 73 (Ex_1)	“those thirty years [of payments were improper right/&” “os trinta anos [de recolhimento foram indevidos/&”
1. 202 (Ex_2)	“ THIS particular case given the circumstances of“ “ NESTE caso pela circunstância de que durante”
1. 203 (Ex_2)	“for THIRTY YEA:RS and creating the expectation” “aceita o dinheiro durante TRIN:TA ANOS se aceita- se cria”
1. 222 (Ex_2)	“=that during thirty [years the contracting party believed that=“ “=que durante trin:ta [anos a contratante acredite que=“
1. 233 (Ex_2)	“=and not thir:ty years that’s why once again asking for deference to judge” “=e não trin:ta anos é por isso que mais uma vez rogando venia ao”
1. 218 (Ex_2)	“it no longer exists and:: [the other side=“ “ele deixou de existir e:: [a parte=“
1. 277 (Ex_2)	“[it’s partial ” “[é parcial “

Source: Own elaboration

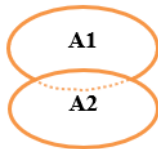
The arguments, represented by the words and expressions repeated by A2 (Table 4), attest the fact that A2’s reaction was a kind adhesion to A1’s arguments. In Table 4, we see that the words in bold are the materialization of the argumentative assimilation process, as each highlighted word/expression represents the repetition, the symbolic “absorption” of A1’s standpoint by A2. For example, when A2 repeats “**thirty years**” (lines 73, 303, 222, 233), he is showing his adhesion of the main arguments employed by A1, for whom “=someone who had been paying for **THIRTY YEARS** without being consulted\ I think we have considered moral damages for much less here I think this here is a considerably greater moral damage\” (lines 127-129/Table 2). Thus, all the bold marks in Table 4 represent the culmination (output) of the process of *argumentative*

assimilation, that is, the resumption of one interlocutor’s speech (arguments, words, sentences, etc.) by another at deliberation table, as a way of showing total alignment with a standpoint, in an act of *adhesion* to another’s position.

In summary, we can perceive the implication of the assimilation process in lines 68↔67, where line 68 represents the assimilation marks of the speech expressed in line 67, hence the symbol “↔.” The same process occurs in lines 73↔72, 202↔33, 203↔33, 222↔33, 233↔33, 218↔214, 277↔276 (Table_4). It is important to observe that a similar argumentative assimilation process also is represented in lines 70↔69, 198↔196, 211↔210, where, inversely, A1 repeats words or expressions used by A2, also as a form of adherence (or “communion” in Perelman and Olbrechts-Tyteca’s terms), alignment, assent to another’s standpoint.

The assimilation process we have just described in the analysis presented, which attests to the performative force of that argumentative interaction, is represented in the figure below:

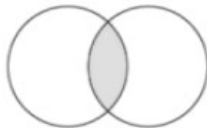
Figure 8 – Argumentative assimilation



Source: Own elaboration

To conclude this analysis, Figure 8 below, which synthesizes the argumentative assimilation process at the deliberation table among three magistrates (Rep, A1, A2) in a Brazilian Second Instance court, from the perspective of the Venn diagram, presents the following representation:

Figure 9 – Representation of argumentative assimilation by Venn diagram



Source: Own elaboration

To conclude

The description and analysis of the argumentative assimilation process, as we have tried to describe, reflects a performative manifestation of language in legal matters (Cornu, 2005, p. 38). Thus, the meaning there “is not in the statement itself, but in the communication situation” (Robrieux, 2010, p. 214), or rather, in the *stasis situation* presented. There, we tried to evidence the exact moments when A2 effectively adheres to A1’s standpoint by showing what we’ve called the argumentative assimilation process.

Certainly, we do not distance ourselves from the heritage of rhetorical studies, originating in Greco-Latin culture, by setting aside the extravagant dichotomy ‘persuade vs. convince’, in favor of the simple notion of *adhesion*, which, in its core, carries a classic rhetorical principle: the inescapable “communion of spirits”, repeated by the authors of the New Rhetoric as we have already shown. In this sense, we recall that, for Feteris (1999, p. 16), a researcher of legal argumentation: “the acceptability of argumentation is tributary to the effectiveness of argumentation by the audience to whom it is addressed.”

To conclude, we hope to have been able to clearly describe the process of *argumentative assimilation* and, through the analysis of the ‘The case of the (non) existence of a retirement contract,’ we hope to have evidenced the marks of an argumentation process followed by a kind of adhesion or alignment to someone’s ideas at a deliberation table. In this sense, we are not talking about a mere argumentative diptych or a banal eristic situation, because, as we believe, “arguing is not to convince at all costs” (Breton, 1996, p. 16); arguing is a process built in the heat of an interaction (*à vif et à chaud*), from a wavering stasis situation.

DAMASCENO-MORAIS, Rubens. Descrição e análise da assimilação argumentativa. **Alfa**, São Paulo, v. 69, 2025.

- RESUMO: Apresentamos, neste trabalho, a descrição de um fenômeno interacional e argumentativo que nomeamos de “assimilação argumentativa”, o qual representa o momento em que dois discursos recalcitrantes, antagônicos, passam a representar um alinhamento argumentativo, a partir da adesão à fala de um proponente por um oponente. A partir de uma revisão dos estudos retóricos, problematizamos a dicotomia “persuadir” vs. “convencer” (Perelman; Olbrechts-Tyteca, 2008; Perelman, 1989, 1999, 2002; Meyer, 2008a, 2008b; Grize, 1995; Angenot, 2008), com o objetivo de mostrar a atuação das quatro etapas do processo de assimilação argumentativa, via Diagrama de Venn. Por meio de metodologia que preconiza o estudo da argumentação com foco na interação verbal e, ainda, com amparo nos estudos da análise conversacional e do Modelo dialogal da argumentação (Plantin, 2008, 2016; Plantin; Doury, 2015; Traverso, 2007; Kerbrat-Orecchioni, 1992, 2011; Damasceno-Moraes, 2021, 2022, 2023a, 2023b), apresentamos análise de um estudo de caso, oriundo do banco de dados ‘Tribunal’, e que ilustra o fenômeno. Concluímos que o estudo da argumentação numa

perspectiva interacional é profícuo para nos ajudar a enxergar fenômenos afins, o que não seria possível se seguíssemos à letra os estudos da argumentação em perspectiva meramente lógico-matemática e formalista, num ideal cartesiano que deixa de fora o olhar para as idiossincrasias do fio da interação argumentativa.

- PALAVRAS-CHAVE: Persuasão; Convencimento; Modelo dialogal da argumentação; Interação; Dano moral.

Data Availability Statement

All datasets supporting the findings of this study is available in a personal file and can be requested from the author(s).

REFERENCES

AMOSSY, R. **L'argumentation dans le discours** – discours politique, littérature d'idées, fiction. Paris: Nathan Université, 2000.

ANGENOT, M. **Dialogues de sourds** – traité de rhétorique antilogique. Paris: Editeur Mille et une Nuits, 2008.

ASCOMBRE, J.-C.; DUCROT, O. **L'argumentation dans la langue**. Bruxeles: Philosophie et langage Pierre Mardaga, 1983.

AUSTIN, J. L. **Quand dire, c'est faire**. Paris: Éditions du Seuil. 1970.

BRETON, P. **L'argumentation dans la communication**. Paris: La Découverte, 1996.

CIANCI, M. **O valor da reparação moral**. São Paulo: Saraiva editora, 2003.

COELHO, F. A. **Reparação do dano moral**: aspectos que devem ser considerados na fixação da forma ou do valor da reparação. São Paulo: Editora Juarez de Oliveira, 2009.

CORNU, G. **Linguistique juridique**. Paris: Éditions Montchrestien, 2005.

DAMASCENO-MORAIS, R. O carpinteiro e a madeira: a constituição de *corpora* jurídicos em perspectiva etnometodológica. **Revista Estudos da Linguagem – RELIN**, v. 29, n. 2, p. 673-709, 2021.

DAMASCENO-MORAIS, R. Quem é esse tal de Terceiro, afinal? **Revista de Letras**, v.1, n. 41, 15 de julho de 2022.

DAMASCENO-MORAIS, R. O modelo dialogal da argumentação e as emoções. **Rétor**, v. 13, n. 2, p. 25-42, jul./dez. 2023a.

DAMASCENO-MORAIS, R. A argumentação segundo o modelo dialogal de Christian Plantin. In: PIRIS, E. L.; GRÁCIO, R. A. (org.). **Introdução às teorias da argumentação**. São Paulo: Pontes, 2023b.

DANBLON, E. **La fonction persuasive – Anthropologie du discours rhétorique: origines et actualité**. Paris: Armand Colin, Collection U philosophie, 2005.

DOURY, M.; PLANTIN, C. Une approche langagière et interactionnelle de l'argumentation. **Argumentation et Analyse du Discours**, n. 15, 2015.

DOURY, M. L'évaluation des arguments dans les discours ordinaires – le cas de l'accusation d'amalgame. **Langage et société**, p. 9-37, 2003.

FETERIS, E. T. **Fundamentals of legal argumentation – a survey theories on the justification judicial decisions**. Netherlands: Kluwer Academic Publishers, 1999.

GOFFMAN, E. Footing. **Semiotica**, v. 25, n. 1-2, p. 1-30, 1979.

GRIZE, J.-B. Argumentation et logique naturelle. **Hermès – Cognition, Communication, Politique**, n. 15, v. I, 1995.

KERBRAT-ORECCHIONI, C. **Les interactions verbales – Tome II**. Paris: Armand Colin Éditeur, 1992.

KERBRAT-ORECCHIONI, C. **Le discours en interaction**. Paris: Armand Colin. Collection U. Lettres – Linguistique, 2011.

LEITE, E. de O. (org.). **Grandes temas da atualidade: dano moral – aspectos constitucionais, civis, penais e trabalhistas**. Rio de Janeiro: Editora Forense, 2002.

MARTINEAU, F. **Petit traité d'argumentation judiciaire**. Paris: Praxis Dalloz, 2010.

MEYER, M. **Qu'est-ce que l'argumentation**. Paris: Collection Chemins philosophiques, 2008a.

MEYER, M. **Principia Rhetorica: une théorie Générale de l'argumentation**. S/l: Librairie Arthème Fayard, 2008b.

NETTEL, A. L. The enthymeme between persuasion and argumentation. **International Society for the Study of Argumentation – ISSA**. Amsterdam: Rozenberg Publishers, 2011.

OLIVEIRA, M. **Dano moral**. São Paulo: LTR Editora, 2006.

PERELMAN, C. **Rhetoriques**. Bélgica: Éditions de l'universite de Bruxelles, 1989.

PERELMAN, C. **Logique juridique – nouvelle rhétorique**. Paris: Éditions Dalloz, 1999.

PERELMAN, C. **L'empire rhétorique – rhétorique et argumentation**. Paris: Librairie Philosophique J. Vrin, 2002.

PERELMAN, C.; OLBRECHTS-TYTECA, L. **Traité de l'argumentation**. Belgique: Éditions de l'Université de Bruxelles, 2008.

PLANTIN, C. **A argumentação**: história, teorias, perspectivas. São Paulo: Parábola Editorial, 2008.

PLANTIN, C. **Dictionnaire de l'argumentation**: une introduction aux études d'argumentation. Lyon: ENS Éditions, 2016.

POSNER, A. Richard. **How judges think**. England: Harvard University Press, 2008.

REIS, C. **Dano moral**. 5. ed. Rio de Janeiro: Editora Forense, 2010.

ROBRIEUX, J. Jacques. **La rhétorique et argumentation**. Sous la direction de Daniel Bergez. 3ème édition revue et augmentée. Paris: Armand Colin, Collection Lettres Sup, 2010.

TEODORO JÚNIOR, H. **Dano moral**. 5. ed. São Paulo: Editora Juarez de Oliveira, 2007.

TRAVERSO, V. **L'analyse des conversations**. Lyon: Armand Colin, 2007.

VIGNAUX, G. Des arguments aux discours – vers un modèle cognitif des opérations et stratégies argumentatives. **Hermès** – Cognition, Paris, Communication, Politique, v. I, n. 15, 1995.

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