

ARGUMENTATIVE ANALYSIS OF AN *ACÓRDÃO*: INSTITUTIONAL FRAMEWORK, DOXA AND SOCIAL REPRESENTATIONS IN A JUDICIAL GENRE

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- **ABSTRACT:** In this paper, we propose to analyze an *Acórdão* produced within a criminal case filed against a woman accused of committing the crime of self-induced abortion. To this end, we mainly built our analysis on Perelman and Olbrechts-Tyteca (1996) and their argumentative categories developed in New Rhetoric, and Amossy (2006), who studies argumentative discourse. When starting this analysis, our aim was to understand the research object in its argumentative structure, trying to identify and correlate aspects of the institutional framework that shapes the practice of argumentation in this rendering, the input channels of doxa elements, manifestations of visible discursive heterogeneity, the presence of social representations, construction and circulation of images of oneself and the other in discourse, and stereotyping processes. We concluded that the *Acórdão* genre is subject to a framework of strong generic and institutional constraints that shape and determine speaking conditions. We also concluded that the *Acórdão* is a genre composed by voices from the legal field (the standard speech, legal science speech and discourses produced in other Courts), and doxa elements circulating in the social environment. Therefore, there is no neutrality of the judging instances because the judicial members are also subject to shared beliefs, conventional wisdom and circulating stereotypes, like any other subject living in a society at a given time.
- **KEYWORDS:** Discourse analysis. Legal discourse. Argumentation. Doxa. Social representations.

Introduction

In this paper, we intend to build a linguistic-discourse analysis from an *Acórdão*¹ produced within a judicial process, instituted to investigate a suspected crime of abortion.

The *Acórdão*² is configured as its own discursive genre within the legal field. It has an argumentative and decision-making nature, as it closes a certain stage of a

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¹ The analyzed appellate decision is available at <<http://www.tjmg.jus.br>>. Accessed June 12th 2009.

² An *Acórdão* is the equivalent of an appellate decision in an appeals court/higher court (MINAS GERAIS, 2009).

trial, and it is characterized by its deeply dialogic nature, for composing a network interspersed with the voices of the subjects that handled the case in the First and Second Instances of Justice (charge, defense and judgment, witnesses and defendant). It also contains the voices of legislation, legal science and judgments made in other courts.

For the proposed linguistic-discursive analysis, we relied on different authors in order to provide comprehensive theoretical and methodological instruments for the specific study of argumentative discourse. We relied on Aristotle (1998) studies, mainly regarding *topoi* or places of speech, Perelman and Olbrechts-Tyteca (1996), from who we will use the argumentative categories developed in New Rhetoric, and Amossy (2006), who promotes a redefinition of Perelman's rhetoric as one of the branches of linguistic discourse.

Based on Amossy (2002), we will look for linguistic features of speech in their enunciation and pragmatic aspects, referring to the situation of enunciation, the addressee's function, the common knowledge, and to the assumptions that authorize verbal interaction, as well as the efficiency of the word defined in terms of action. We are thereby adopting the "in situation" language analysis perspective, in its inter-subjective dimension, where *I* implies a *you*, even when this is not explained by linguistic marks, considering that all enunciation is necessarily directed to the addressee, looking to guide us in the ways of seeing and thinking.

We also clarify that we adopt a theoretical-methodological approach that understands criminal proceedings, to which the *Acórdão* genre belongs, as a system of articulated genres to perform activities, as postulated by Bazerman (2005). This way, we realize that during the proceedings established for the trial of a concrete case, many of the produced acts and procedural documents are interconnected, composing a dialogical argumentative web in which one's speech is present in the other's speech, constituting it to be confirmed or, else, refuted.

Applying the analysis categories to the selected *Acórdão*, we observe that the set of doxics that determines the speech situation in this pleading, acts by conditioning the subjects, who shape their word, without being fully aware of its dimension. This set is composed by the knowledge of the legal field – scientific knowledge, legitimated by the instances of producing discourses of that nature, such as academies, courts, and legislative institutions – and also by social representations on abortion, male and female genders, and the role of the judiciary in society.

Regarding the corpus: The *Acórdão* genre and its position within criminal proceedings

The *Acórdão* selected for this analysis was produced in a criminal case, instituted for the trial of a woman who supposedly had a self-induced abortion. The court record states that the woman, presumably two months pregnant, would have introduced a probe into her uterus to end an unwanted pregnancy, contracting, with it, a serious infection, which would take her to look for help at a health care unit in the city where she used to live.

When treating the woman, the hospital's medical staff suspected an attempted abortion, and called the police. From there, an inquiry for investigation was instituted, and the inquiry turned into a criminal case, proceeding which followed the procedure of the Jury Court. Yet, according to our country's current legislation, self-induced abortion is considered a felony crime against life, and crimes of that nature are judged by a Popular Jury.

From the moment the *notitia criminis* was taken to the police until the end of the procedure, under the ritual of the Court Jury, a profusion of procedural acts and parts was produced, which, in the end, formed an argumentative dialogical network. Based on this network, the truth about the behavior attributed to the defendant was built and rebuilt by the procedural subjects.

Thinking about the prosecution from which the here analyzed *Acórdão* was taken, we can observe the formation of a genre network, consisting of several acts and pleadings. This way, the police inquiry, whose head is the Chief of Police, aided by the Civil and the Military Police, is a prerequisite for the District Attorney to submit the denunciation. It is based on the narrated facts and the evidences produced during this investigation that the Prosecutor charge drafts the denunciation document. Likewise, all subsequent parts somehow make reference to the Police Inquiry, as well as the *Acórdão* analyzed by us, in which the announcers quote excerpts, documents, testimonies that are collected there.

Therefore, the criminal proceedings can be considered as a system of genres, once the texts that make up their records cannot be analyzed separately; they are part of a network constituted by other texts that help to perform specific activities, whose responsibility belong to the participants of the system. These participants – the Law operators – use several documents that can be recognized by specific functions and forms, configuring themselves in discursive genres which are interrelated with the purpose to reach an end.

We observe that in this network, in which genre sets produced by various procedural subjects overlap, an act or document cannot be prepared without the latter. There is a strong interdependence between the practices, regulated by

criminal procedure law. This is the theoretical and methodological design that guides the analysis proposed here.

Enunciative conditions of the *Acórdão* genre

In order to have a better understanding of the *Acórdão* genre and its enunciative conditions, we had an initial conceptual issue: what is an *Acórdão*? The word *Acórdão* comes from “*acordam*” (“agreeing”), which is used to start the decision text and means “get in accordance”, “are in accordance”, as to a particular factual and legal matter submitted to trial. In article 163 from the Code of Civil Procedure, we found that the *Acórdão* is the judgment delivered by the court judges (BRASIL, 1973). According to Federal Constitution, Judges who act in State Courts of Justice are called appeals court judges (BRASIL, 1988). Linking these information together, we have the first mention of this genre’s authorized producers – the appeals court judges –, as well as the institutional framework where it is produced – Courts of Justice.

According to legal definition, we can still see that the *Acórdão* is a coherent entity, even if the conviction result emanates from three judges. During a trial session held at Court, the Supreme Court Judges vote regarding the concrete case they are submitted. The final text will be drafted by a Rapporteur minister, who is drawn for this purpose.

The Court’s Internal Charter determines that the *Acórdão*, drawn up by the court reporter, will contain the identification of the president, the court reporter himself and the other judges, and also the other votes will be added to theirs. In the case analyzed here, as the judgment was unanimous and there was only a written vote of the court reporter with the other judges’ manifestation who “agreed”, only this vote was fully published. In other words, the Rapporteur minister’s vote embodied itself in the final text of the ruling.

In this text, all the essential requirements defined by the understanding of various articles are contained: article 165, combined with articles 458 and 563, from the Code of Civil Procedure and article 82 from the Internal Charter (BRASIL, 1973). They establish that the *Acórdãos* must contain: a summary (votes summary); an overview; an indication of the authority where the ruling was pronounced; a report, which identifies the names of the parts, the amount of requests and answers of the defendant, as well as a register of the main events that happened along the trial; the foundation, through which the magistrate will examine factual and legal questions; the arrangement, in which the magistrate will tackle the questions submitted by the parts.

The articulation’s final result of all parts is a full pleading, which receives the generic name of *Acórdão*, written in an extremely formal and specialized language,

full of quotations from legal texts, famous quotations from Law Scholars, references to other parts of the process itself. All these elements make it very difficult for laymen to understand it.

Still, it is interesting to clarify that the *Acórdão* is a sentence, but uttered at a second jurisdiction level. Regarding the enunciative conditions, we observe a quite clear difference between both: if on one hand, a sentence is the result of the conviction from a judge only, on the other hand an *Acórdão* is the result of a deliberation of three Supreme Court Judges, at a superior instance, that will give the final words regarding the initiated conflict.

For the argumentative analysis of the *Acórdão*, it is necessary, at first, to pay attention to the institutional framework that shapes and determines the discursive function of a genre turned towards persuasion.

In the criminal justice procedure discourse of the Jury Court, we have an argumentative framework similar to a rhetoric/dialectic game. Prosecution and defense present their thesis in an attempt to secure the judging body's adherence: the Court judge, in the first phase of the process; the appeals court judges of the Court of justice, at the appeal stage; the Jury, during the Judgment session at the Court of justice.

For Amossy (2006), the use of persuasive speech is conditioned to the socio-institutional place of its production and circulation, having the distinction between judicial, deliberative, and epideictic genres as a consequence. Thus, argumentation finds itself in a dependent relationship regarding the field from which it emerges and with the genre where it is inserted, adopting the persuasive modalities that are more relevant to it.

Thus, in criminal justice discourse, the persuasive game submits itself to rules as much as to the conditions of who can take the player's role, as well as to the proper functioning of the game. Therefore, its discursive productions are themselves subjected to severe law restrictions, and regulations and procedures from the legal field.

Considering that the factual truth is not previously given in the procedural situation, and might not even be reached at the end of legal procedures, prosecution and defense look at gathering everything that is trustworthy from their point of view, using language resources in order to persuade the judge of their thesis' plausibility. The judging instance's only role is to position itself in favor or against one side or the other side, as the State cannot avoid judgement. In fact, by accepting one thesis or the other, it builds a new version of the facts, resulting from his interpretative activity, and it is that version that acquires value of truth, thanks to the power relations overarching the functioning of the judicial institution.

Fuzer and Barros (2008) clarify that some genres, within a criminal proceeding, can only be used for a certain procedural subject. Similarly, Travaglia (2002) states that in strict institutional frameworks, there are “expected producers” of some kinds of texts. The *Acórdão* genre has the appeals court judges as authorized announcers. They are, in Bourdieu’s (2008) words, subjects that hold a social status that guarantees considerable symbolic power regarding public audiences, even in the face of first instance magistrates, given the hierarchical position they hold within the judicial structure.

The entity of interlocution in this pleading is vast, and it contains addressees who are directly interested in the referral of the matter submitted to trial. Thus, as a direct addressee, we have the defendant, whose guilty or innocent status depends on the unfolding of the trial’s proceedings. We also have the defense attorney, who can be considered as the mediator between defendant and judges, as in his role of attorney, it is him/her who stands for the accused. In fact, although he is the main stakeholder in the proceedings, the defendant is heard in specific moments, such as during the interrogations. In most situations, it is the attorney who speaks in his/her name, through pleas.

As immediate addressees, we also consider the first instance Judge, the Prosecutor, and justice attorney. As mediate addressees, we list other public servants, court office employees who will give fulfillment to the commandments of the decision and, at a broader level, society, as the main function of Law is to keep social peace.

To illustrate, we elaborated the following enunciative framework:

Frame 1: Enunciative conditions of the *Acórdão*

Argumentative strategies mobilized in the *Acórdão* genre

Once the participants who operate in this rhetoric/dialectic game are established, we can reflect on the argumentative strategies they use in order to persuade. In classic rhetoric, it is considered that the speaker, based on a topic (a set of common places), tries to make his interlocutors adhere to the theses he shows them.

We should, however, consider, unlike logics or mathematics, which act inside a system of closed elements, that in argumentative speech the speaker builds up his/her arguments from various sources, which include elements of common sense as well as specialized elements from a specific subject.

These elements, generically called doxical elements by Amossy (2006), are defined as a set of beliefs and collective knowledge, constituent of the points of agreement that underlie any argumentation, and on which the persuasion effect

depends. According to the author, the study on doxical elements is justified to the extent that they contribute to the understanding of a discursive operation whose central purpose is the adhesion of an opponent, in a determined communicative situation.

This way, in the theories that study argumentation in their rhetorical aspects, to which the *perelmanian* theory and Amossy's analysis of argumentation in discourse affiliate themselves, it is considered that argumentative discourse is built on points of agreement that are established between speaker and audience. Hence, Amossy points out "[...] it is always in spaces of shared opinions and beliefs that he tries to solve a dispute or to strengthen a point of view. Shared beliefs and social representations are, therefore, the foundation of any argumentation." (AMOSSY, 2006, p.99)³.

It is interesting to observe that, according to Amossy (2006), the argumentative discourse anchors itself in a *doxa* which pervades the argumentative subject without him being aware of it. Thus, the author relativizes the rhetorical notion of the subject, according to who it would be a sovereign entity, which uses the proceedings to an explicit purpose.

Amossy also embarks on the task of giving the *doxa* concept and its correlates, such as "*topoi*", "stereotype", "conventional wisdom", "shared opinion", "social representations", a detailed marking, given the complexity and universality of these notions. Thereby, in her proposal to analyze the argumentation in discourse, the author links the idea of *doxa* or common opinion to the places of speech, conventional wisdom, social representations and stereotypes, which are the channels where it emerges in a concrete way.

Next, we will talk about these *doxa* entrance channels in the analyzed *Acórdão*.

Places of speech and references from one field to another

In their studies on *doxa*, Amossy and Herschberg-Pierrot (1997) go back to Aristotelian *topoi* and, like other authors, such as Perelman and Olbrechts-Tyteca (1996) and Ducrot (1989), operate a new methodological systematization around concepts of common and specific places.

The authors define the common place (*topos/topoi*) as a formal structure, a logical-abstract scheme with no determined content, which shapes the argumentation. As formal schemes, common places can be turned into the most diverse modalities, such as: "what is true for less is true for more". As a result of

³ [...] c'est toujours dans un espace d'opinions et de croyances collectives qu'il tente de résoudre un différend ou de consolider un point de vue. Le savoir partagé et les représentations sociales constituent donc le fondement de toute argumentation. (AMOSSY, 2006, p.99).

this common place, we have thoughts like: if a person can dedicate his/her time to help neighbors, he/she certainly can dedicate time to help his/her own family; the one who's good to someone, can be even better to someone closer. This concrete application of the places implies the predominance of certain values, at a given time, in a given context.

While Perelman and Olbrechts-Tyteca (1996) build a classification of Aristotelian places, defining them in their relation with values and hierarchies, and with the degree of compliance that they generate in the audience. Thus, they state that to support values or hierarchies, or reinforce the intensity of compliance they induce, it is possible to relate them to other values and hierarchies, but it can also be resorted to general premises, called places.

The authors make a distinction between the common places, which are wide affirmations about what is supposed to be worth more in any domain, and the specific places, which determine what is worth more in a specific domain.

To the common places, they add quantity and quality places. Places of quantity are understood as places that claim that something is better than something else for quantitative reasons. On the other hand, the places of quality appear in the argumentation when the merit of the numbers is challenged.

Applying these formulations to the studied *corpus*, generally speaking, we may claim that, in the criminal procedural discourse from the Jury trial, the *doxic* set that determines the situation of argumentative speech acts by conditioning the subjects and shaping its word, without being aware of its dimension. This set consists of their own knowledge from the legal field – scientific knowledge, legitimated by the instances of discourse production of this nature, such as academies, courts, legal institutions – and also by social representations on abortion, from the male and female genders, and the role of the judiciary in society nowadays.

In the analyzed *Acórdão*, we can see how common and specific places are invoked to support an argumentation in the context of a Criminal Procedure.

Throughout the rendering, we found many textual sequences in which the announcer makes literal quotations of excerpts from legal doctrine works, legal arrangements and jurisprudence, originating from Courts of Justice as well as many other Courts. We highlight, in these sequences that many generic statements were included, such as the one we wrote below:

Everything that is licit will be suitable to project the real truth.
(jurisprudence STJ, fls. 123)⁴

⁴ *Tudo que lícito for, idôneo será para projetar a verdade real.* (jurisprudência do STJ, fls. 123)

All proof is relative: none will have a decisive *ex vi legis* value or necessarily a greater prestige than the other (Guidance contained in the Statement of Reasons of the CPP, mentioned in the STJ jurisprudence, fls. 124)⁵

All proofs should be equally considered, with no existing hierarchy among them. (STJ jurisprudence, fls. 125)⁶

These are broad statements, being the result of a reasoning elaborated for a specific situation, but that are written in a way that they can be used in any enunciative situation where the same theme is approached. Therefore, due to their high level of generalization, they can be separated from the original situation in which they were produced, and fit in other enunciative situations, in order to endorse a particular case coming from a general knowledge (AMOSSY, 2006).

We also observe that, in the generic enunciation analyzed above, the rule discourse (resulting from legislation) and judicial discourse (the ones produced in situation of litigation trials), are invoked to support the reasoning of the judge who elaborated this *Acórdão*.

Maingueneau (1997, p.117) supports that “references from one field to another”, materialized in quotations, implicit schemes or captions, are really useful for a discursive efficiency, because:

[...] confronted to a discourse from a certain field, a subject finds elements that were elaborated somewhere else, which, intervening subsequently, create a proof effect. We can see a metaphor, a generalized transposition from one field to another (but not from any field to any other field), without being able to define the place of origin, literally. (MAINGUENEAU, 1997, p.117)⁷.

The “field” to which the author refers corresponds to a vast discursive domain: political, juridical, religious and philosophical. By analogy, we observe that, even inside a single field, in which there are other subfields, these references are recurrent. In the legal field, for instance, which includes a great variety of subdomains of a vast nature (such as rule discourse, discourse about

⁵ *Todas as provas são relativas: nenhuma delas terá ex vi legis valor decisivo ou necessariamente maior prestígio que outra. (orientação constante da Exposição de Motivos do CPP, citada em jurisprudência do STJ. (fls. 124).*

⁶ *Todas as provas devem ser igualmente consideradas, não existindo, entre elas, hierarquia. (jurisprudência do STJ, fls. 125).*

⁷ “[...] confrontando com um discurso de certo campo, um sujeito encontra elementos elaborados em outro lugar, os quais, intervindo sub-receptivamente, criam um efeito de evidência. Assiste-se a uma metáfora, a uma transposição generalizada de um campo a outro (mas não de qualquer campo para não importa qual outro), sem que seja possível definir um lugar de origem, em “sentido próprio”. (MAINGUENEAU, 1997, p.117).

Law Science and judicial discourse), transposition activities from one place to another are essential.

Authier-Revuz (2004), analyzing the presence of the “other” in the discourse, elaborates the concepts of shown and constitutive heterogeneity⁸. In the first case, it is about “[...] defined formulas that give the other a linguistically describable place, clearly delimited in the discourse.” (AUTHIER-REVUZ, 2004, p.21)⁹. The constitutive heterogeneity, in its turn, is identified by other dispersed, missing forms that are not so easy to retrieve from speech.

In the same way, Maingueneau (1997, p.75) states that:

The first [shown heterogeneity] concerns the explicit manifestations, that can be recovered from the diversity of enunciation sources, whereas the second [constitutive heterogeneity] approaches a heterogeneity that is not defined by surface, but that DA can define, formulating hypotheses, through interdiscourse, regarding the constitution of a discursive formation¹⁰.

The author understands that elaborating an exhaustive categorization of heterogeneity marks is a risky task, which can lead to errors. Therefore, he chose to elaborate an empiric classification, in which he divides, in two sets, the mechanisms that he considers useful for Discourse Analysis. This way, the polyphony mechanisms, presupposition, negation, reported speech, quotations, speaker’s metadiscourse, paraphrase, free indirect discourse, irony, and authority argument are treated by Maingueneau (1997) as facts of heterogeneity¹¹.

We observe a manifestation of heterogeneity that can be seen in a textual sequence which will be shown later. Here, the reported speech strategy includes the arrangement, by the announcer, of other voices to report an enunciation.

⁸ Authier-Revuz ancora sua reflexão no dialogismo de Bakhtin, mas também na teoria psicanalítica de Jacques Lacan. Em nosso trabalho, utilizamos apenas alguns elementos descritivos propostos pela autora.

⁹ “[...] formas marcadas que atribuem ao outro um lugar linguisticamente descritível, claramente delimitado no discurso.” (AUTHIER-REVUZ, 2004, p.21).

¹⁰ “A primeira [heterogeneidade mostrada] incide sobre as manifestações explícitas, recuperáveis a partir de uma diversidade de fontes de enunciação, enquanto a segunda [heterogeneidade constitutiva] aborda uma heterogeneidade que não é marcada em superfície, mas que a AD pode definir, formulando hipóteses, através do interdiscurso, a propósito da constituição de uma formação discursiva.” (MAINGUENEAU, 1997, p.75).

¹¹ A heterogeneidade discursiva é abordada por Maingueneau (2008) no nível do interdiscurso. A noção de interdiscurso é desenvolvida por esse autor paralelamente aos conceitos de formação discursiva e intersubjetividade enunciativa. Em nosso trabalho, optamos por não adotar essa vertente como instrumento de análise. Por uma questão de coerência à concepção de processo penal como um sistema de gêneros articulados para a realização de atividades, em uma perspectiva sistêmico-institucional, utilizaremos apenas alguns elementos descritivos da proposta de Maingueneau na descrição e explicação da dimensão institucional do discurso jurídico.

In the excerpt below, taken from the analyzed *Acórdão*, the announcer makes a literal quotation of an author who enjoys great prestige in the legal sphere, who seems to corroborate, so far, the thesis defended by him. The announcer writes:

Therefore, teachings of JÚLIO FABBRINI MIRABETE: Sometimes, infringements do not leave traces or these aren't found, disappear, do not remain, making a direct examination impossible. Are cited, as an example, manslaughter by drowning on the high sea in which the dead person's body isn't found, the theft in which the taken object is not recovered, the rape and violent sexual assault when the case is taken to the competent authorities, days after it occurred, etc... (fls.122, free translation)¹²

We draw the attention to the fact that the name of the author highlighted in the sentence was put in capital letters, to underline the prominent position he occupies in the legal sphere. Here, the legal science speech is used to support the reasoning, confirming the truthfulness of the thesis defended by the speaker.

The literal quotation, which it is one of the modalities of reported speech, is considered to be one of the most classic manifestations of enunciative heterogeneity, in a way that "direct discourse [literal quotation] is characterized by the apparition of a second 'speaker' within the statement imputed to the first 'speaker'" (MAINGUENEAU, 1997, p.85, free translation).¹³

It is a "dramatization of a previous utterance", without necessarily being absolutely similar. This way, it would be naïve to believe that direct speech only intends to faithfully recount the quoted words.

When assessing the speaker's compliance degree to what is being stated, Maingueneau identifies a fundamental ambiguity to the quotation phenomenon. This aspect consists of a variation of the speaker's distancing level, explained below:

The cited speaker seems to be, at the same time, as the not-me, regarding to what the speaker delimits himself, and as the "authority" who defends its assertion. It can be said that 'what I say is true because I'm not the one saying', as well as the opposite. In the end, what is 'authority' in terms of discussion, if not the name of an absent

¹² *Neste sentido, ensinamentos de JÚLIO FABBRINI MIRABETE: Por vezes, as infrações não deixam vestígios ou estes não são encontrados, desaparecem, não permanecem, impossibilitando o exame direto. Citem-se como exemplo o homicídio praticado por afogamento em alto-mar em que o corpo da vítima não é encontrado, o furto em que a coisa subtraída não é recuperada, o estupro e o atentado violento ao pudor quando o fato é levado ao conhecimento da autoridade muitos dias após a ocorrência, etc.. (fls. 122).*

¹³ *"[...] o discurso direto [citação literal] se caracteriza pela aparição de um segundo 'locutor' no enunciado atribuído a um primeiro 'locutor'." (MAINGUENEAU, 1997, p.85).*

person? If the invoked authority were present, it would expose itself to the discussion and would cancel itself as such. (MAINGUENEAU, 1997, p.86).¹⁴

In the excerpt transcribed above, the distance level between the judge (announcer) and the author quoted by him (Mirabete) seems minimal, while the adhesion of the first to the other's assertion reaches the maximum level.

After the direct quotation of Mirabete's lessons, the announcer brings another element to confirm his thesis. This time, he literally transcribes the excerpt from an *Acórdão* chronicled by a Minister of the Higher Court of Justice, related to the trial of another case:

It is worth highlighting the venerable HIGHER COURT OF JUSTICE's position, in the lapidary appellate decision narrated by Min. Vicente Cernicchiaro: 'body of defense, according to the classic definition of João Mendes, is the set of sensible elements of the criminal act. It is said to be direct when material elements of the imputed act are gathered, and indirect, if, by any means, evidence to the existence of the criminal act. The Constitution of the Republic safeguards that the proofs can be admitted as long as they are not forbidden by the law. Thus, it remains allocated to the final clause of art. 158, CPP, or in other words, the confession cannot be fit to vie for the body of defense exam. In a modern case, there isn't a hierarchy of proofs, not even specific proofs for given cases. Everything that is illicit will be unfit to project the real truth (...)'. (fls.122)¹⁵

At a micro contextual level, in which we can note the linguistic structure of the quotations, Maingueneau (1997) points out that verbs that introduce reported speech, as "[...] depending on the chosen verb (suggest, state, claim...), the whole interpretation of the quote will be affected." (MAINGUENEAU, 1997, p.88).¹⁶

¹⁴ *O locutor citado aparece, ao mesmo tempo, como o não-eu, em relação ao qual o locutor se delimita, e como a 'autoridade' que protege a asserção. Pode-se tanto dizer que 'o que enuncio é verdade porque não sou eu que o digo', quanto o contrário. O que é afinal 'autoridade' em matéria de discussão, senão o nome de um ausente? Se a autoridade invocada estivesse presente, expor-se-ia à discussão anulando-se como tal. (MAINGUENEAU, 1997, p.86).*

¹⁵ *Vale posicionamento do colendo SUPERIOR TRIBUNAL DE JUSTIÇA, em lapidar acórdão relatado pelo Min. Vicente Cernicchiaro: 'Corpo de delito, na clássica definição de João Mendes, é o conjunto dos elementos sensíveis do fato criminoso. Diz-se direto quando reúne elementos materiais do fato imputado. Indireto, se, por qualquer meio, evidencia a existência do acontecimento delituoso. A Constituição da República resguarda serem admitidas as provas que não foram proibidas por lei. Restou, assim, afetada a cláusula final do art. 158, CPP, ou seja, a confissão não ser idônea para concorrer o exame de corpo de delito. No processo moderno, não há hierarquia de provas, nem provas específicas para determinado caso. Tudo que ilícito for, idôneo será para projetar a verdade real (...)'. (fls. 122).*

¹⁶ *"[...] em função do verbo escolhido (sugerir, afirmar, pretender...), toda a interpretação da citação será afetada." (MAINGUENEAU, 1997, p.88).*

In the quotation transcribed above, the announcer introduces the speech of the Minister of the Court of Justice with the following expression: “It is worth highlighting the venerable SUPERIOR COURT OF JUSTICE’s position, in the lapidary appellate decision narrated by Min...”¹⁷. In this case, the verb “to be worth” conveys the assumption that the opinion of the quoted announcer endorses the view of the one who quotes, being, therefore, useful to avoid any doubt that could subsist on the fact.

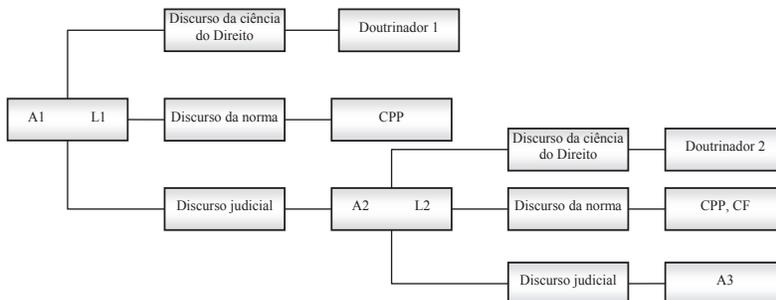
It is also highlighted that the qualifier used to designate where the quotation comes from – the “Venerable SUPERIOR COURT OF JUSTICE”¹⁸ – strengthening the correctness of the proposition and the argumentative value of the authority of who said it. This way, it is also worth the note that the degree of remoteness between the appeals court judge and the quoted author is minimal, while the acceptance level of the first to the proposition of the latter is highest.

To understand the arrangement mechanism of voices in this last excerpt transcribed, we will call the appeals court judges that made the report l_1 (announcer 1) and the analyzed *Acórdão* will be called A_1 (*acórdão* 1). A_1 and l_1 will serve as examples. The other locutors arranged by l_1 will be called l_2, l_3 and so on. We will see how different announcers fit, in different enunciative situations, in a pleading with a view to persuade the audience.

l_1 quotes another *acórdão* (A_2), produced by another announcer (l_2), which was a decision-maker in another legal action, but in a different enunciative situation, to support its argument. In this quoted *acórdão* (A_2), l_2 builds his arguments based on the teachings of renowned authors of legal science; he mentions the provisions of the law, mainly the Federal Constitution and Criminal Procedure Code and also mentions a third *acórdão* (A_3).

As follows, we have a schematic table of these direct and indirect quotations:

Table 1 – Reported speech in the *Acórdão*



Source: Made by the author

¹⁷ “vale posicionamento do colendo SUPERIOR TRIBUNAL DE JUSTICA, em lapidar acórdão relatado pelo Min...”.

¹⁸ “Colendo SUPREMO TRIBUNAL DE JUSTIÇA”

Regarding dialogism in the formation of the judgment, we transcribed the explanatory note of Bittar (2009, p.316-317):

If no discourse comes *ex nihilo*, it is because there are rules and coercion that prevent the arbitrariness of a unilateral decision, so that, close to any decision, a conjuncture of elements that ends up characterizing its own corporeality is invoked. Proofs, writings, documents, texts, rule and fact interpretations are found to form a set of instruments through which, and this within rules (procedural proceedings) that discipline the means, moments, ways, techniques... of affecting the rational persuasion of the judge. Other rules also govern the means of appraising proofs, texts, rules... by the judging entity, from the moment that, coming from within that textuality, he extracts the decision-making judicial discourse.

Continuing the analysis on the use of reported speech in our *corpus*, we proceed to approach, from this point on, how it works as an argumentative manifestation mechanism of social representations and stereotypes in speech.

Reported speech, social representations and stereotypes

Within the fluid and undetermined set of the familiar and shared “already known”, “already said”, Amossy (2006) draws the attention to the social representations that emerge from speech, in a more or less implicit way.

Based on Moscovici (2003), Leyens (1986) defines social representation as “[...] a social construction process of reality that, schematically, tries to explain and categorize the reality around us.” (LEYENS, 1986, p.362)¹⁹. The author emphasizes that social representations are not only beliefs, but also a way to shape reality and, as such, affect our behaviors.

In the argumentative analysis proposed by Amossy, such as in the French tradition of Discourse Analysis, social representations that emerge in a more or less implicit way during the speech are understood by the notion of stereotype:

[...] In the narrow sense of the word, stereotypes can be defined as a simplified and frozen collective representation or image of living beings or things that we inherit of our culture, and that determine our attitudes and our behaviors. Considered as a belief and as an

¹⁹ “[...] um processo de construção social do real que, de maneira esquemática, tenta explicar e categorizar o real que nos rodeia; este processo vai, por sua vez, regular a dinâmica da sociedade.” (LEYENS, 1986, p.362)

opinion, it always falls within the pre-constructed and often related to prejudice. (AMOSSY, 2006, p.121)²⁰

The stereotyping elements, in turn, are identified through their discursive components, such as lexical choices, circulating images, and the study of what is implicit.

Amossy and Herschberg-Pierrot (1997) point out that in all subjects we can observe a tendency to treat stereotyping as something pejorative, which makes it difficult to freely understand the reality, as well as to produce something original and innovative. Differently, the authors propose to replace the ideological analysis of stereotypes by an approach in which it is considered an inevitable phenomenon, without which the operation of categorization, generalization or identity construction of the interlocutors would be possible (AMOSSY, 2006).

For the efficiency of the word, in this case measured based on its power of persuasion, stereotyping is very important, as well as other *doxical* elements. Stereotyping consist of thinking reality through a preexisting cultural representation, in which the community evaluates and sees the individual and classifies him according to a pre-built model. Thus, “[...] stereotypes allow to designate the ways of thinking belonging to a certain group and the global contents of the doxa sector in which it is located.” (AMOSSY, 2005, p.126)²¹. From this perspective, a subject can only represent the others if relating them to a social, ethnic or political category, such as, for instance, the social, communist, liberal, feminist class, etc.

The stereotype is not always uttered with all its attributes, which requires a “deciphering” activity by the interlocutors, in which the characteristics of the target group must be identified and related to an already existing cultural model, which results in the dialogical character of stereotyping.

Amossy (2006) states that, in most cases, the discourse data are indirect or implicit, sparse and lacunar, in such a way that stereotypes need to be reconstructed from different elements, to identify a typical feature. In the same way, Authier-Revuz (2004, p.17-18, free translation) postulates:

In the case of the (or, without a doubt ‘various’) free indirect discourse(s), irony, euphemisms, imitation, allusion, reminiscence, stereotype (...) the presence of the other is not explicit by its sole

²⁰ “[...] au sens restreint du terme, le stéréotype peut se définir comme une représentation ou une image collective simplifiée et figée des êtres et des choses que nous héritons de notre culture, et que détermine nos attitudes et nos comportements. Considéré tantôt comme une croyance et tantôt comme une opinion, il relève toujours du préconstruit et s’apparente souvent au préjugé.” (AMOSSY, 2006, p.121).

²¹ “[...] o estereótipo permite designar os modos de raciocínio próprios a um grupo e os conteúdos globais do setor da doxa na qual ele se situa.” (AMOSSY, 2005, p.126).

presence in the phrase: the 'mention' that doubles the use that is done of the words is only possible to recognize, interpret, from the recoverable proofs in the discourse dependent of its exterior.²²

According to Authier-Revuz (2004), this way of "playing with the other" operates in the implicit, unrevealed, enigmatic space, and is used a lot in speeches of a rhetorical nature. It is a risky activity, because "deciphering" can be given in accordance with the announcer's project, or not. For instance, a possible need of "deciphering" in the analyzed *Acórdão*:

In the case of the records, we can see that medical proof was striking, not only in the depositions of the doctors, alarmed by the rising numbers of abortion cases in the city, but also by adding the sheets, corresponding to the interment of the Appellant [woman accused of self-induced abortion] at the ER, all of this because of the complications that would come from an abortion. (fls.126).²³

In this excerpt, we can see that there was a shared belief that women were, increasingly, submitting themselves to self-induced abortion procedures in the city where the trial was submitted. This belief was disseminated among the people participating to the procedural relation and was used at the opening of the Police Inquiry, when *Santa Casa* employees were summoned to testify. On the basis of this belief, the announcer of the analyzed rendering (appeals court judge) produced the above statement.

In a deciphering activity of the lacunar elements, we can say that the defendant was related to a group of women who, hypothetically, had been practicing self-induced abortion in the city. These women shared the characteristic of being economically and socially disadvantaged, as they used dangerous devices to provoke fetal death, such as the introduction of a probe into the uterus or ingestion of abortifacient drugs, submitting themselves, in all cases, to serious risks of death.

When suffering complications of these risky procedures, those poor women would look for medical care. The public employees' attitude to denounce the defendant to Police authorities is related to the belief that there needs to be a

²² "No caso do (ou, sem dúvida, 'dos') discurso(s) indireto(s) livre(s), da ironia, da antífrase, da imitação, da alusão, da reminiscência, do estereótipo (...) a presença do outro não é explicitada por presenças unívocas na frase: a 'menção' que duplica o uso que é feito das palavras só é dada a reconhecer, a interpretar, a partir de índices recuperáveis no discurso em função de seu exterior". (AUTHIER-REVUZ, 2004, p.17-18).

²³ No caso dos autos, constata-se que a prova médica foi contundente, não só nos depoimentos dos médicos, alarmados com o crescimento dos casos de aborto na cidade, bem como na juntada da ficha correspondente ao internamento da Recorrente [mulher acusada de fazer o autoaborto] no Pronto-Socorro, tudo por causa das complicações que teriam nascido de um quadro de aborto. (fls. 126).

punishment for those who practice a socially reprehensible conduct, eventually to serve as an example to other women²⁴.

The need for stereotyping is higher to the argumentative functioning than plausibility to check the presented arguments. In the case of the woman being investigated in this trial, when identified as belonging to a determined female group, the addressee's deductive reasoning does not cause estrangement, reasoning according to which: many disadvantaged women were inducing on-site abortion. The defendant had abortion symptoms. Therefore, the defendant voluntarily interrupted her pregnancy.

In the argument typology of Perelman and Olbrechts-Tyteca (1996), we believe that this form of argument would receive the classification of almost logical argument, built on the basis of a transit relationship, according to which it is possible to claim that there is the same relation between terms "A and B", "B and C" and "A and C". This kind of construction is known as a rhetorical syllogism, although it isn't a perfect reasoning, as its premises are distorted making it difficult to acquire a logical aspect.

There is another excerpt from this *Acórdão* that seems interesting to illustrate a reconstruction activity of lacunar clues speech. See hereunder:

Hence, as strong clues exist on the authorship and materiality, there was no other solution for HE Judge of the lower court than to denounce, preserving the constitutional competence of the Jury trial (CF/1988, art. 5, XXXVIII). (fls.131).²⁵

In this fragment, the appeals court judges associates the first level magistrate (HE Judge of the lower court), who produced the defendant's decision to arraign, to the social group composed of judges invested by the State, having the responsibility to strive for law enforcement and the proper working of the judiciary system. As a member of such a prominent and select group, this magistrate wouldn't be able to remain inert when confronted to self-induced pregnancy proofs: his/her role, as a law enforcer and guardian of society and the judiciary institutions, is to put the suspect on trial, leaving little or no space for showing his/her subjectivity regarding law enforcement.

²⁴ Nesse sentido, parece interessante registrar a conclusão de Debuyst, em pesquisa sobre as representações sociais da Justiça em Portugal, em que o autor identifica um sistema de filtragem do aparelho judiciário, responsável pela criação de bodes expiatórios: "[...] por um lado, existe uma zona, a que chamamos de 'infrações ligeiras' que poderiam ser facilmente descriminalizadas e face às quais o aparelho judiciário aparece como inadequado. Por outro lado, [...] existiria uma outra zona (as infrações graves) em que se deveria sobreinvestir ao nível da repressão e da vigilância." (DEBUYST, 1986, p.374).

²⁵ *Daí que, existindo fortes indícios sobre a autoria e a materialidade, outra solução não restava ao MM. Juiz a quo que pronunciar a denunciada, preservando a competência constitucional do Tribunal do Júri (CF/1988, art. 5, XXXVIII). (fls. 131)*

In some texts, on the other hand, the stereotype is seen in an explicit way, when we realize that its constituents are shown in a visible way. Therefore, there is no need for the addressee to go into the more complex “deciphering” activity, or filling gaps. In the analyzed *Acórdão*, we highlighted, to this purpose, the treatment forms used to refer to the judges, prosecutors, appeals court judges, attorneys and lawyers, in opposition to the forms used for the defendant. As her place is devoid of any prestige, there are no qualifications for the defendant, other than the ones established by law, such as: defendant, accused, investigated, indicted, nominated, investigated plaintiff and examined.

As for Members of Justice, who carry a great symbolic capital, already crystallized formulas are used, repeated for a very long time without announcers questioning their meaning and that can, usually, be arbitrarily abbreviated, as the recipients of the rendering are able to automatically recognize their meaning.

In the same way as the subjects who are members of Justice, their acts, bodies and renderings are also frequently followed by qualifiers, such as: HE Judge; Honorable District Attorney; Eminent court decision; [venerable] Supreme Federal Court; [distinguished] Court of justice of Minas Gerais; Illustrious Prosecutor.

Until now, we spoke about the function of stereotyping for the plausibility of the argumentative speech. Here, we propose a reflection on the role of stereotypes during the image building process of ourselves or others, which circulate in the argumentative speech.

***Ethos* and stereotyping**

Based on Amossy (2005), we can affirm that the image construction process happens like this: in the constitutive relation between argumentative parts, the *doxa* acquires the meaning of prior knowledge that the audience has of the speaker. By starting to speak, the speaker gets an idea of his audience and how he/she will be perceived; thus supporting his/her arguments on *doxa* and shapes his/her *ethos* based on the collective representations, which he/she believes to have a positive value in eyes of his/her audience. According to the author:

The speaker adapts his self-presentation to the collective schemes that he believes to be internalized and valued by his target audience. He does not only do this regarding his own person (frequently, it is not fashionable to speak of ourselves), but also by the modalities of his enunciation. Only then, he tasks the receptor with getting an impression of the speaker relating him to a known category. The

discourse gives him all the elements he needs to compose a portrait of the addressee, but he presents them in an indirect, disperse, lacunar or implicit way. (AMOSSY, 2005, p.126-127).²⁶

Thus, in the excerpt analyzed above, when the appeals court judge states that “there wasn’t any other solution for HE the Judge of the lower court than to pronounce the accused”, he/she is offering clues so that the addressee has a positive image of the judge, linking him to the category of members of the Judiciary Power, which carries out its duties with care and attention. The same way, when agreeing with the position defended by this “competent and cautious” judge, the appeals court judge also claims the same virtue for himself/herself as for the one he attributes to his/her colleague of an inferior instance.

In the same way, the qualifiers used to name members of Judiciary and the acts they perform during a trial can be understood in their argumentative function of building positive images of the main procedural subjects, in opposition to the defendant, whose image was linked to categories usually suffering prejudice in the social environment during the action (in the case records from where the analyzed *Acórdão* was taken, it says the accused is a black, single, homeless and jobless mother, and that she had already been sued for drug trafficking).

When explaining the role of the stereotype as a scheme activated by the receiver and linked to a known cultural model, Amossy (2006) has, however, a proviso regarding its contribution to the efficiency of speeches with a persuasive aim. Relativizing its effects, the author defends that stereotypes favor the enterprise of persuasion, but can also impair it some situations, as we can see below:

If, indeed, the addressee easily detects the social representations that belong to an adversary group in the discourse or that, for one reason or another, it seem inadmissible, the sole presence of the stereotype will be enough to disqualify the positions of the arguer. If, on the other hand, he adheres to the images that are presented to him, he can let himself get carried along by the argumentation that feeds on the representations coming from his own vision of the world. (AMOSSY, 2006, p.123).²⁷

²⁶ “O orador adapta sua apresentação de si aos esquemas coletivos que ele crê interiorizados e valorizados por seu público alvo. Ele não o faz somente pelo que diz de sua própria pessoa (frequentemente, não é de bom-tom falar de si), mas também pelas modalidades de sua enunciação. É então que ele incumbe o receptor de formar uma impressão do orador relacionando-o a uma categoria conhecida. O discurso lhe oferece todos os elementos de que tem necessidade para compor um retrato do locutor, mas ele os apresenta de forma indireta, dispersa, lacunar ou implícita”. (AMOSSY, 2005, p.126-127).

²⁷ “Se, com efeito, o alocutário detecta facilmente no discurso as representações sociais que pertencem ao grupo adverso ou que, por uma ou outra razão, lhes parecem inadmissíveis, a simples presença do estereótipo será suficiente para desqualificar as posições do argumentante. Se, ao contrário, ele adere às imagens que são

It seems interesting, at this point, to think about the word efficiency problem, by the articulating discourse, mainly in the argumentative modality, subject status and institutional network.

According to Bourdieu (2008), to be heard and respected is a matter of authority, that depends on the status that the announcer holds in the social structure. Maingueneau (2008), in his turn, understands that the enunciators themselves define their "status" and "way of speaking", putting themselves and the listener in a certain social position, stating their relation with a given knowledge and legitimating their speech. As for Amossy (2005), the speaker's status and institutional frame in which he speaks are important, but do not, per se, guarantee the effectiveness of the word. Therefore, the image building mechanism becomes essential to the enterprise of persuasion.

Regarding the analyzed case-files, judges, prosecutors, appeals court judges, as well as members of the Judiciary, due to their own status and the position they occupy in the Judiciary institution, seem to have a great advantage compared to the defendant, regarding previous images of her circulating in the social environment. However, this is not enough to guarantee the success of their thesis in any argumentative struggle defined by the case's boundaries. The prior image needs to be corroborated by discursive elements, as those shown above.

In order to "strengthen" the prior image through discursive elements, we believe that the strategy used by the appeals court judge in the analyzed statement is the quotation of renowned legal literature authors, Court decisions uttered in other cases, and legal provisions. As shown before, the voice arrangement mechanism is important in order to give plausibility to the thesis defended by appeals court judge. However, it also seems to have consequences for the constitution of his/her good image of studious jurist, committed to the evolution of Legal Science, which seeks to base his/her decisions on the latest doctrine and jurisprudence.

Final Considerations

For the linguistic-discursive analysis of the selected *corpus*, we worked with Amossy's theoretical construction, which studies argumentation in discourse, together with Perelman's argumentation theory, known as New Rhetoric, without excluding other theories which could contribute to a deeper and broader view of the complexity of our research object.

colocadas sob seus olhos, ele poderá se deixar levar pela argumentação que se alimenta das representações procedentes de sua própria visão de mundo". (AMOSSY, 2006, p.123).

When we analyzed the *Acórdão*'s argumentative structure, we tried to identify and correlate aspects such as the institutional framework that shapes the argumentation exercise in this kind of utterance, the input channels of doxical elements, manifestations of shown heterogeneity, the presence of social representations, construction and circulation of images of oneself and others during speech and the stereotyping processes. All these "categories" were analyzed according to how they were used in a discourse of persuasive aim, as is the *Acórdão*.

We broadly concluded that the *Acórdão* genre, produced within a legal discourse field, is submitted to strong generic and institutional restrictions. As we took into account how the institutional complex works for characterizing discursive activity, word efficiency could not be approached, except through the articulation of speech, especially in the argumentative modality and institutional complex.

We also concluded that even an utterance coming from voices inside the legal field (rule discourse, Legal Science discourse and discourses produced in other trials), which intends to be neutral and impartial, is impregnated with values and doxical elements coming from the social environment.

Therefore, as much as there is an alleged impartiality or neutrality of the judging instances regarding the submitted cases, this is an unachievable ideal, as the judicial members are also exposed to shared beliefs, conventional wisdom, circulating stereotypes, like any other person who lives in certain society, at a certain time.

PAULINELLI, M. de P. T.; SILVA, A. dos R. Análise argumentativa de um acórdão: quadro institucional, doxa e representações sociais em um gênero judicial. *Alfa*, São Paulo, v.59, n.3, p.483-505, 2015.

- *RESUMO: Neste artigo, propomos a elaboração de uma análise linguístico-discursiva de um Acórdão, produzido no interior de um processo criminal instaurado para apurar suposta prática de aborto voluntário por uma mulher. Para isso, apoiamos-nos principalmente nos constructos teóricos de Amossy (2006), de estudo da argumentação no discurso, em paralelo com a Teoria da Argumentação de Perelman e Olbrechts-Tyteca (1996), conhecida como Nova Retórica. Ao emprendermos essa análise, objetivamos a compreensão do objeto de pesquisa em sua estrutura argumentativa, buscando identificar e correlacionar aspectos como o quadro institucional que modela o exercício da argumentação nesse proferimento, os canais de entrada dos elementos dóxicos, as manifestações de heterogeneidade mostrada, a presença das representações sociais, a construção e a circulação de imagens de si e do outro no discurso e os processos de estereotipia. Concluímos que o gênero Acórdão está sujeito a um quadro de fortes restrições genéricas e institucionais, que modela e determina as condições do dizer. Concluímos ainda que se trata de um gênero formado a partir de vozes provenientes do próprio campo jurídico (discurso da norma, discurso da ciência do direito e discursos produzidos em*

outros Tribunais), e de elementos dóxicos circulantes no meio social. Portanto, por mais que se postule uma pretensa neutralidade das instâncias julgadoras diante dos casos que lhes são submetidos, esse é um ideal inatingível, pois os membros do judiciário também estão sujeitos às crenças compartilhadas, às ideias recebidas, aos estereótipos circulantes, como qualquer outro sujeito que viva em dada sociedade, em certo momento histórico.

- **PALAVRAS-CHAVE:** *Análise do discurso. Discurso jurídico. Argumentação. Doxa. Representações sociais.*

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