

The Concept of Justice: Argumentation and Dialogism / *O conceito de justiça: argumentação e dialogismo*

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ABSTRACT

This paper presents a reflection attempting to situate the concepts of justice and argumentation in Perelman's approach in dialogue with the Bakhtin Circle's theories. For this purpose, it analyses the concept of justice, deals with the concept of argumentation in order to situate its field and to emphasize how it supports the concept of justice, highlights the ethical and dialogical aspects of legal argumentation, establishing connections between Perelman's ideas and dialogic principles of language, and, finally, attempts to show how different voices intersect in the argumentative confrontation through the analysis of two excerpts of legal discourses.

KEYWORDS: Justice; Argumentation; Rhetoric; Dialogism; Ethics.

RESUMO

Este trabalho apresenta uma reflexão procurando situar os conceitos de justiça e de argumentação na abordagem de Perelman em diálogo com as teorias do Círculo de Bakhtin. Para tanto, aborda o conceito de justiça; trata do conceito de argumentação procurando situar o seu campo e destacar como esse conceito respalda o de justiça; destaca o caráter ético e dialógico da argumentação jurídica estabelecendo conexões entre as ideias de Perelman e os princípios dialógicos da linguagem; e, finalmente, procura mostrar como diferentes vozes se interseccionam no embate argumentativo por meio da análise de dois fragmentos de discurso jurídico.

PALAVRAS-CHAVE: Justiça; Argumentação; Retórica; Dialogismo; Ética.

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Introduction

Chaïm Perelman, as Lempereuer (2005) emphasizes, is considered one of the greatest Law philosophers of the 20th century. His relevance, however, goes beyond Law; he plays a prominent role in language studies, particularly in those related to argumentation. Considering that the legal practice is based on the adversary principle, which joins two parties in lawsuits, Perelman attributed a main role to argumentation. His studies led to an intensification of Rhetoric, since he resumed the legal genre of Old Rhetoric and enriched it.

Matters such as justice, values, reasonableness, and argumentative procedures are frequent in Perelman's works. When thinking of them jointly, we raise some questions about the concept of justice, the field of argumentation, and the relationships between argumentation and the concept of justice. These questions seem to dialogue with studies on discourse, allowing us to broaden our vision and to search for new relationships between different theoretical points of view about the same object. In this way, the paper intends to reflect upon the underlying dialogic vision in the concept of justice proposed by Perelman, which is present in legal discourse. Thus, the present text is divided into three parts, besides this introduction and the final considerations: The first one broaches the concept of justice for Perelman; the second part deals with the concept of argumentation, attempting to situate its field and to emphasize how this concept supports that of justice; and the third part attempts to show the ethical and dialogic aspects of legal argumentation according to Perelman's approach.

1 The Concept (s) of Justice for Perelman

Perelman (1980) introduces his thinking about the conceptualization of justice, warning his readers that he does not intend to present just one concept; he emphasizes that his intentions differ from those of most people. He does not believe in the existence of only one meaning which may grasp this idea. For him, the idea of justice, as well as the idea of other abstract nouns such as freedom, good, virtue, is based on a scale of values built by individuals during their existence in order to guide them. Thus, for

Perelman, justice is just a virtue among others; and from another perspective, it involves morality through which he counterbalances other values connected to it.

The philosopher reminds us that all revolutions and wars were always in the name of justice, to which as many supporters of the new order as the defenders of the old one are attached; however, each one is convinced that their positioning is fair. As a result, every one speaks about a different justice, which shows that there is not a true, absolute concept of justice, but only concepts acceptable to a specific community in a certain situation. According to Perelman (1980, p.2), “Each will defend a conception of justice that puts him in the right and his opponent in the wrong.”

Starting, therefore, from the thinking that justice depends on the values of each one, he presents various conceptions of justice which emphasize how they can be understood on the basis of different values, numbered here from one to six to help our reading. According to the philosopher, the main conceptions of justice are the following: 1. “To each the same thing.” This conception declares that “all the people taken into account must be treated in the same way, without regard to any of their distinguishing particularities” (PERELMAN, 1980, p.2). According to this conception, there is not a perfect justice because “the perfectly just being is death” (PERELMAN, 1980, p.3). 2. “To each according to his merits” (PERELMAN, 1980, p.3). The idea here is that human beings should receive proportionate consideration according to their merits. 3. “To each according to his works” (PERELMAN, 1980, p.3). This idea of justice does not presuppose equal treatment for all, but one according to the results of their actions. It has, therefore, a practical aspect because it fails to take the intention and the sacrifice into account to the detriment of the results. 4. “To each according to his needs” (PERELMAN, 1980, p.4). This is not about considering the merit, but about meeting the basic needs of man, which makes this justice formula similar to charity. 5. “To each according to his ranks” (PERELMAN, 1980, p.4-5). It recognizes the differences men acquire according to their position, but the intrinsic qualities of the person are not considered. According to Vannier (2001), this rule of justice is aimed to hierarchical societies like lineage societies. 6. “To each according to his legal entitlement” (PERELMAN, 1980, p.5). For Perelman (1980), this formula is a paraphrase of the Roman *suum cuique tribuere*, and it means that the fair live according to the letter of the law. The reading of justice formulas proposed by Perelman indicates

how the concept is unsteady. Legal discourse is supported, to justify its decisions, as much in equality as in difference, through conflicting formulas which demand, therefore, multiple perspectives of interpretation according to the values of those who apply them.

In fact, the choice of a normative system admits a more general value whereby rules are deduced. For Perelman (1980), this is about a value based on affection which is based neither on logic nor on reality. Such value is arbitrary, irrational, and is founded upon the emotional character of essential values in every normative system.

It is from this notion of values that Perelman (1980) seems to situate the judge in his decidable role. For Perelman (1999), in *Logique juridique: Nouvelle rhétorique*, the judge's role is beyond the simple enforcement of the letter of the law, which, as such, would be understood as unfair. This means that when a letter of the law brings an ethical problem to a given case, it is necessary to come back to the legislator's intention; it gives the judge an opportunity to interpret the texts and to pass sentences which seem fairer. The sense that allows declaring some acts fair and others unfair is, according to Perelman, ethics.

The philosopher argues that the notion of justice pre-exists its linguistic expression because it corresponds to a universal sense. And even though the idea of justice applies in relation to real facts in many different ways, it involves something universal, the notion of equality: "We can, then, define formal or abstract justice as *a principle of action in accordance with which beings of one and the same essential category must be treated in the same way*" (PERELMAN, 1980, p.11; emphasis in original). What occurs, however, is that, in relation to their values, each one has different ideas of what kind of application the rule of justice must have. It is necessary to consider, however, that there are notions of ethics, although vague, which, taken to a certain degree of abstraction, may be considered universal. In general, it is in the name of these notions that judges allow themselves to interpret the spirit of the law, instead of applying it *ipsis litteris*.

The rule of justice also includes another conception postulated by Perelman (2012): Acceptability. For Perelman, the fair action

is in accordance with an accepted rule or, at least, with an established precedent. When an authorized decision broached, in a certain way, a

relevant case of a certain category, it is very fair and rational to broach a case essentially similar in the same way (2012, p.119).¹

Thus the application of justice supposes a classification of human beings according to their essential characteristics.

The fact is that, for Perelman (2012, p.58), our sense of justice considers, simultaneously, several essential categories, which are not always in agreement. This makes the work complex and allows us to conclude, with the author, that “perfect justice is not of this world.”² It is always possible to say that something was unfair because it didn’t take into account a criterion considered essential by the interested person. We can affirm, from Perelman’s thinking, that the notion of justice is fluid and not based on facts, but on values applied in the assessment of the facts, which implies different points of view, controversies, disagreement, and agreement as well.

2 Rhetoric, Justice, Legal Argumentation, and the Question of Values

The relationships between Rhetoric and justice are present since the origins of Rhetoric. Studies on Classical Rhetoric report (cf. ROBRIEUX, 1993) that it emerged from proceedings to recover lands which had been expropriated by tyrants who invaded Sicily, in Italy, at the beginning of the 5th century B.C. The invaders deported the island’s inhabitants to settle their mercenaries there. But a democratic movement reverted the situation, and it was necessary to repara the damages left, which occurred by means of proceedings conducted for the first time in front of a popular jury. According to Robrieux (1993), it was from the necessity of convincing this jury’s members that Rhetoric came from, which connects it, since its origins, to jurisdictional acts.

It’s worth considering that speaking well or poorly implies intention and, therefore, argumentation. We argue for a determined purpose, which, as Danblon (2005) emphasizes, can be making decisions to change a world representation. In addition, we

¹ Text in original: *est celle qui se conforme à une règle admise ou, du moins à un précédent établi. Quand une décision autorisée a traité d’une certaine façon un cas relevant d’une certaine catégorie, il est bien juste, et rationnel, de traiter de la même façon un cas essentiellement semblable.* (PERELMAN, 2012, p.119).

² Text in original: *la justice parfaite n’est pas de ce monde.*

concur with the author that we only build argumentations in domains where men exert some kind of control. The legal sphere is one of them, and Rhetoric's own history testifies it.

In legal practices, argumentation occupies a prominent place, playing an important role due to the necessity of convincing and to constant decision-making involved in the work of lawyers, judges, and jurists. Indeed, as Perelman (1999) teaches us, Law is elaborated through controversies as well as through argumentation, showing that arguments used by opponents are irrelevant, arbitrary, inopportune, invalid, and that the solution proposed by them is unfair.

In the same sense, Danblon (2005) postulates that arguing consists in expressing reasoning to lead an audience to adopt a conclusion which it does not adhere to. As this scholar explains, it is a complex action that presupposes, at least, the domain of three quite elaborated concepts: Reasoning, audience, and conclusion. When we argue, we determine a relationship between reasoning and conclusion, establishing a pertinent connection between both. This pertinent connection is based on a series of world representations, which are shared by the arguing community; they are representations which sometimes can be expressed under the form of laws, general principles, or proverbial truths. It is what the rhetorical tradition has called *commonplace*. The pertinent bond between reasoning and conclusion is valuable to the audience we address.

As with justice, Rhetoric is based on values accepted by the community. According to Perelman (2012), the rhetorical action in justice consists of searching for conditions which allow us to qualify an act, a rule or a person as fair; it means, therefore, to determine what is valid, what deserves to be approved in the area of social action. From this point of view, justice also resorts to *commonplaces* or to values that represent the aspirations of the community where it is inserted and whom it serves.

As Perelman defines, argumentation consists of a set of discursive techniques for "obtaining or reinforcing the adherence of the audience to some thesis, assent to which is hoped for" (1979, p.10). This definition includes the concept of agreement, which has nothing to do with truth, but is connected to adhesion and, for this reason, argumentation never develops in the emptiness. Arguing, as we emphasized before, has to do with decision-making, whether to choose a vacation destination or to sentence or

not a defendant. It is decision-making from discourse, whether your own discourse or other people's, that is, those supposed to be convinced. Rhetoric is, therefore, connected with discourse, with the use of words. From this point of view, threat and promise are part of the field of argumentation because they use language to get adhesion. That is why Perelman (2012) excludes violence and caress, once both are not necessarily based on speech. In addition, according to his examples, the demonstration, which works with the truth of premises that support the truth of a conclusion, is not part of the rhetorical field.

Argumentation, in contrast, is based on valid premises, that is, acceptable as true in a given context for a certain community, but not absolutely true. So the adhesion to a thesis is not connected to the notion of truth, but it depends on values. Values, in their turn, are not absolute, and they vary. Argumentation is structured on the basis of the values of the speaker and of the audience, in constant dialogue. This is the first concept of argumentation which supports the justice argumentation: The concept of value, that is, a system of beliefs and certainties accepted as true for a certain social community. As Van Dijk (1998) observes, they are the pillars of the moral order of societies, since basic social opinions are built starting from these values.

For Perelman (1999), in the act of decision-making there is the intersection between justice and argumentation. Argumentation is based on uncertainties, which appeals to human freedom and, from this point of view, the notions of moral issues and freedom are intrinsic to argumentation, since no argumentation is based on truth because adhesion vanishes before truth. Indeed, according to Perelman, there is no freedom in truth because it demands the submission of ignorance to knowledge. Freedom is formed, in contrast, by the deliberation on values and by a choice which stems from the hesitation that leads to a decision. As Perelman observes, we do not exert our freedom where there is neither the possibility of choice nor alternative; it is deliberation that distinguishes men from automata; and deliberation is in the source of decision.

Apropos of this point, Danblon (2002) observes that modern societies, having reached a certain institutional maturity, rely more on a human trial than on a mechanical application of procedures for finding the truth. From this point of view, argumentation only takes place when a communion of ideas is possible. In this sense, the values are on

the base of any trial or assessment, which makes them very important for argumentation and, above all, for justice.

Perelman emphasizes that the power granted to the judge

is not limited by a legal range clearly defined once and for all – because the terms of a law, clear and deprived of ambiguity in certain application cases, can fail in other situations (2012, p.574).³

In fact, the judge has the obligation to judge, but, in addition, he must build a foundation for his trial, indicating how to establish a connection between his decision and the legislation he applies. His argumentation must serve, therefore, to justify the application of the law making his decision valid, which gives argumentation a central place for justice, because it only becomes fair if it is valid inside the values admitted as such in the community where it is inserted.

In analyzing the role of decision, Perelman (1999) observes that opinions are elaborated thanks to the reasonings that have nothing to do with the evidence or with the analytical logic, but with assumptions based on values whose analysis depends on an argumentation theory. From this point of view, the notion of justice excludes the notion of the absolute and is founded upon men's agreement, an aspect pointed out by Amossy (2006) in Perelman's proposal. According to this expert in discourse, the New Rhetoric postulated by Perelman offers an important framework to discourse analysis, as it insists on some premises such as the founding character of premises and the agreement points in the argumentative interaction, beyond commonplaces widely used in argumentation (cf. AMOSSY, 2006).

Considering that argumentation implies reasoning, Perelman (1999) emphasizes that the questions related to justice and to its insertion into the field of Law, as well as those concerning legal reasoning, can only be answered if we really understand an idea of Law in a certain society, or, at least, an idea admitted tacitly by it. This thinking is echoed by Bakhtin when he affirms that

The way in which the word conceptualizes its object is a complex act – all objects, open to dispute and overlaid as they are with

³ Text in original: *n'est pas limité par un cadre légal clairement défini une fois pour toutes – car les termes d'une loi, clairs et dépourvus d'ambiguïté par rapport à certains cas d'application peuvent cesser de l'être dans d'autres situations* (PERELMAN, 2012, p.574).

qualifications, are from one side highlighted while from the other side dimmed by heterogeneous social opinion, by an alien word about them. [...] The way in which the word conceives its object is complicated by a dialogic interaction within the object between various aspects of its socio-verbal intelligibility (1981, p.277).

We can say that Justice, which comprises formulae not always consonant, is a discursive object and, as such, it is crossed by disagreement.

3 Justice and Argumentation: An Ethical and Dialogical Principle

We admit with Perelman (1999) that Law is elaborated through controversies, through the argumentation showing that the arguments used by the opponent are irrelevant, arbitrary, inopportune, and invalid, and that the solution proposed is unfair. It is in the same sense that we quote Vološinov:

Thus, each of the distinguishable significative elements of an utterance and the entire utterance as a whole entity are translated in our minds into another, active and responsive context. *Any true understanding is dialogic in nature.* Understanding is to utterance as one line of a dialogue is to the next. Understanding strives to match the speaker's word with a *counter word*. Only in understanding a word in a foreign tongue is the attempt made to match it with the "same" word in one's own language.

Therefore, there is no reason for saying that meaning belongs to a word as such. In essence, meaning belongs to a word in its position between speakers; that is, meaning is realized only in the process of active, responsive understanding. Meaning does not reside in the word or in the soul of the speaker or in the soul of the listener. Meaning *is the effect of interaction between speaker and listener produced via the material of a particular sound complex* (1973, p.102-103; emphasis in original).

We can relate the Bakhtinian thinking to the controversial aspect of Law. According to Perelman (1999, p.8), even in a specific society "the legal reasonings are accompanied by incessant controversies, and this occurs as much among the most distinguished jurists as among the judges who work in the most prestigious courts."⁴ From this point of view, the legal reasoning could be very rarely considered right or

⁴ Text in original: *les raisonnements juridiques s'accompagnent de controverses incessantes, et ceci aussi bien entre les juristes les plus éminents qu'entre les juges qui siègent dans les tribunaux les plus prestigieux* (PERELMAN, 1999, p.6).

wrong, true or false, in an impersonal way, because making a decision in Law necessarily implies a personal commitment which has to do with the responsible ethical aspect postulated by Bakhtin (1981, p.346), for whom “every discourse presupposes a special conception of the listener, of his apperceptive background and the degree of his responsiveness; it presupposes a specific distance.”

We can affirm, therefore, that legal reasoning is a responsible-responsive attitude that leads us to the conception of dialogism. In the Bakhtinian dialogic vision,

In point of fact, *word is a two-sided act*. It is determined equally, by *whose* word it is and for *whom* it is meant. As word, it is precisely *the product of the reciprocal relationship between speaker and listener, addresser and addressee* (VOLOŠINOV, 1973, p.86; emphasis in original).

Indeed, in rare occasions good reasons presented to support a decision are not questioned for reasons which are also good in favor of different decisions, and two faces of the word emerge from this questioning. The same occurs when justice is the matter. There are, in these reasons, values whose appreciation varies depending on the person and is not limited to a calculation, so nothing proves that the decision made is effectively the only fair solution for the problem presented. We find here a convergence between Perelman’s and Bakhtin’s ideas.

In analysing Bakhtin, Amorim also associates his ideas to the questions of Justice. For this author, the concepts of validity and justice are, in Bakhtinian theory, “in relation to the individual who thinks, from the positioning which he thinks” (AMORIM, 2009, p.22).⁵ This thinking is in accordance with Perelman’s postulates, for whom the concept of justice is neither absolute nor based on truth; from this perspective, the justice act is seen as an ethical gesture which considers the other, or in Bakhtin’s words (1981, p.279), “the word is born in a dialogue as a living rejoinder, within it; the word is shaped in dialogic interaction with an alien word that is already in the object. A word forms a concept of its own object in a dialogic way.” The other is always present in action and in thinking, in assessment and in judgment, which

⁵ Text in original: [...] em relação ao contexto do sujeito que pensa, à posição a partir da qual ele pensa. (AMORIM, 2009, p.22).

emphasizes the dialogic aspect of justice, and of the judging act. Legal reasoning, as Perelman characterizes it, points out this dialogic aspect:

[...] the legal reasoning aims to discern and justify the authorized solution of a controversy, in which argumentations in various meanings, conducted in accordance with imposed procedures, attempt to enforce in different situations a value or a commitment among values, which can be accepted in a certain environment and at a certain moment (PERELMAN, 1999, p.183).⁶

It is worth remembering that every discourse aims at an interlocutor who also constitutes it, a concept that, according to Amossy (2005), is in the core of the concept of audience, which is very important for the Rhetoric defined by Perelman in his *Tratado da Argumentação*, developed with Olbrechts-Tyteca, as a speaker's construction, not of the effective, real audience. According to the author, this conception of dialogism is the most pertinent to the analysis of the argumentative discourse because the person who argues builds an image of the other, of his beliefs, knowledge and opinions, and, based on this image, he builds his discourse to the interlocutor, predicting reactions and possible objections. It is in this sense that, according to the author, the positioning of the discourse toward the other, as Bakhtin insists, meets with the basic principle which is the foundation of Rhetoric since Aristotle's days until Perelman in modern times.

The convergence between the concept of dialogism and the foundations of Rhetoric allows us, in accordance with Bakhtin, to understand how something repetitive and formal in the language also becomes formal meanings which are renewed in the act of enunciation. This implies taking into account the matter of personal freedom – and we can include the law interpretation by the judge as one of the instances of this freedom according to the pertinent values to the society in which he is in.

Meaning in general and the law interpretation by the judge are collective products of a cultural system which is legitimized by the communal acceptance. Specifically in the legal field, the laws, in this sense, crystallize the collective values, but they don't contain the meanings applicable to any cases. On the other hand, these

⁶ Text in original: [...] *le raisonnement judiciaire vise à dégager et à justifier la solution autorisée d'une controverse, dans laquelle des argumentations en sens divers, menées conformément à des procédures imposées, cherchent à faire valoir, dans des situations variées, une valeur ou en compromis entre valeurs, qui puisse être accepté dans un milieu et un moment donnés* (PERELMAN, 1999, p.136).

meanings are not in the person, the judge, who takes them to legitimize his decisions. This reflection leads us to Bakhtin:

The speaking person and his discourse, as subject of thought and speech, is, of course, treated in the ethical and legal realms only insofar as it contributes to the specific interests of these disciplines. All methods for transmitting, formulating and framing another's discourse are made subordinate to such special interests and orientations (1981, p.350).

A discursive confrontation, in the legal sphere, occurs precisely in the argumentative game. It can be said that in this sphere the argumentative dialogue directs the construction of meaning – the law interpretation – as a product in a certain sense *ad hoc*, since it is constantly modified by the dynamic aspect of language in society, once it is also the result of the arguments built in the same language.

Recently, in Brazil we have followed a case involving the trial of requests for reconsideration by the Federal Supreme Court (STF).⁷ These appeals were presented by the defendants' attorneys because of the Criminal Action 470, which was brought by the Public Prosecution Service, in STF, against some members of President Luís Inácio Lula da Silva's administration and of the Workers' Party. They were accused of political corruption by means of buying votes of parliamentarians in Brazil's National Congress in 2005 and 2006, in the case known as *Mensalão*.

Requests for reconsideration are foreseen in the article 333 of the STF Internal Regiment for defendants who have obtained at least four favorable votes, giving them the right for a new trial. However, the same benefit was omitted in the law 8.038/1990, which regulates the actions in the STF. The conflict among normative guidelines led to an impasse in the Supreme Court.

In the discursive confrontation between the Supreme Court Justices the dialogic aspect of the legal argumentation to which we referred before is evident, as well as the linguistic and discursive process of the construction of meaning in which the voices sometimes join other voices and sometimes confront them. As an example, we propose the analysis of two excerpts of votes by the Supreme Court Justices who rejected or accepted the requests.

⁷ *Supremo Tribunal Federal* in Portuguese. In the text, we will refer to Brazil's Federal Supreme Court using the abbreviation STF.

Supreme Court Justice Joaquim Barbosa manifested his opposition to the requests for reconsideration on the basis of the omission of the law regarding these requests. This enunciator is supported by the voice of public opinion, reinforced by most of the mass media and by common sense which accuse Brazilian justice of being lenient with white-collar criminals, as in the case of the defendants in question. Barbosa's discourse, as we can observe in the following excerpt, reflects this voice:

The review of facts and evidences by the same judging body is absolutely improper. The Constitution and the laws do not foresee additional privileges. This Court has already taken five months in 2012 and now in the second semester of 2013 we have already spent more than a month deliberating. The acceptance of requests for reconsideration in this case would be a way of making the deed eternal (<http://www.olhardireto.com.br/noticias>. Access in: Oct 17, 2013).⁸

Being aware of the legislative omission, since by the letter of the law the defendants would have the right to trial reconsideration, the Supreme Court Justice chooses a discourse which does not relativize the situation and makes appeal to the rule of justice, according to which all human beings must be treated equally, that is, "to each the same thing." Thus, part of the value judgment which establishes that it is preferable and desirable to close the case so that a problem is not extended and, supported by the society discourse that sees the justice as an institution which discriminates the poor, he refutes the aristocratic conception "to each according to his ranks." At the beginning of the excerpt, he does not mention the review of the trial, which would be the review of something subjective, but he refers to the "facts and evidences," i.e., the objective, concrete elements. By saying that this review is "absolutely improper" and that "the Constitution and the laws do not foresee additional privileges," he erases the existence of the STF's article 333 and resorts to the supreme law, which is available to all citizens and not only to those who can appeal to the Supreme Court.

To stress his position linguistically and to emphasize the longevity of the case as something harmful to society, he uses the adjective locution "absolutely improper," whose purpose is to supply by means of the universality of the proposition the

⁸ Text in original: *A reapreciação de fatos e provas pelo mesmo órgão julgador é de toda indevida. A Constituição e as leis não preveem privilégios adicionais. Esta Corte já se debruçou cinco meses em 2012 e agora no segundo semestre de 2013 já ultrapassamos um mês de deliberação. Admitir embargos infringentes no caso seria uma forma de eternizar o feito.*

exceptional nature of the request. In addition, he uses the adverb of time “already” twice in the sense of “before, previously,” associating these two occurrences of the adverb to the past tense, indicating a finished action: “This Court has already taken” and “we have already spent more than a month deliberating.” Thus he reinforces the collective voice which clamors for the fast closure of the case as well as the discourse denouncing the slowness of justice and the privileges that it grants to powerful people.

When he refers to the alternative of accepting the requests that he refutes, he uses the verb in the conditional tense “to admit [...] would be,” which indicates a fact that depends on a condition. In this case, this virtual condition would be “making the deed eternal,” that is, the Supreme Court would agree with the game of the attorneys’ defendants in order to postpone the case and, therefore, it would be against the collective voice claiming for a swift and fair justice in accordance with the Constitution.

Supreme Court Justice Luís Roberto Barroso, in the opposing camp, was based on the requests of reconsideration foreseen. Because he defends the acceptance of the requests, his discourse is more conciliatory; it confronts divergent points of view and articulates them, appealing to the value based on the place of order, on what is established by law, that is, “to each according to his legal entitlement.” According to this, “the rule of the game” should not be changed, even if it seems unfair:

Even if it is possible to suppress the requests for reconsideration, I think a change in the rule of the game would be inappropriate when it is almost in the end. There is no reason to subject such an emblematic process to a casuistic decision at the last minute. As the whole Brazilian society, I am also exhausted by this case. It must end. We have to turn the page [...]. Nobody wants the extension of this lawsuit. However, the Constitution exists precisely for this: To prevent the right of 11 people from being disregarded due to the interest of millions. (http://www.olhardireto.com.br/noticias_. Access in: Oct 17, 2013).⁹

The excerpt of the Supreme Court Justice’s discourse begins with the term “even if,” whose function is to embody the opposing voice to refute it. With that, he does not simply oppose the other’s voice, but he immerses in it, then from there he presents

⁹ Text in original: *Mesmo que se queira cogitar da supressão dos infringentes, penso que seria imprópria uma mudança da regra do jogo quando ele se encontra quase no final. Não há porque sujeitar um processo tão emblemático a uma decisão casuística, de última hora. A exemplo de toda sociedade brasileira, eu também estou exausto deste processo. Ele precisa chegar ao fim. Temos que virar esta página. [...] Ninguém deseja o prolongamento desta ação. Mas é para isso que existe a Constituição: para que o direito de 11 não seja atropelado pelo interesse de milhões.* (<http://www.olhardireto.com.br/noticias>. Acesso em: 17 out. 2013)

himself as a dissonant voice: “As the whole Brazilian society” “I am also exhausted” “We need to turn the page.”

The verb “think” gives the whole discourse a rational tone which is amplified when he evokes the “rule of the game,” as well as the same “Constitution” which had been used in Barbosa’s discourse, appealing to the values founded upon tradition. By placing eleven people against millions, Barroso reverses his opponent’s equation: It is not eleven privileged people who make the request, but a small group whose right should not be “disregarded due to the interests of millions” and fights the mass. In this sense, the adversative conjunction opening the last sentence highlights the contrast between what it is said, “I join the chorus of those who want to close this case,” and what it will be said, “I disagree with those who want to end this case.” This last proposition gains more prestige because the Law is above the interest of groups, even if this is about the interests of a majority; the Law is the supreme value. It is curious here how Barroso’s discourse appropriates, now with a totally different intention, the same conception which guided Barbosa’s discourse: “to each the same thing.”

Final Considerations

Without considering the merit of the specific case of *Mensalão*, in regard to the matter of Justice approached in this text, it is based on a principle essentially argumentative and dialogic in its double dimension: Whether it is understood as a shift between subjects who express divergent ideas or understood as sonant or dissonant voices which are evoked in the speech of each subject. This dialogism permeates the concept of Justice, as much from the point of view considered fair, as from the point of view of the legal acts that strive to build justice argumentatively in favor of a particular case.

In addition, the idea of dialogism inherent to the interactive aspect of the language is echoed in Perelman’s postulates, particularly in those related to the act of judging connected to the judge. Both Perelman and Bakhtin are inserted into a world where monolithic truths have vanished. Thus, recognizing and understanding the heterogeneous, contradictory, dialogic aspect that permeates one of the most elaborated human institutions, the legal sphere, is recognizing the uniqueness of discourse and the

multiple possibilities that it offers so that we can have access to the way the concept of Justice is constructed.

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