

Beyond The Supererogatory: Examining the legal discourse in a motion for clarification vote

Além Do Soberano: Examinando o discurso jurídico em um voto de injunção de esclarecimento

Más allá del soberano: examinando el discurso jurídico en un voto de aclaración por injunción

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Resumo: Este estudo aplica a Análise Crítica do Discurso a um voto divergente no STF. Examina a posição do ministro Cristiano Zanin contra a extensão da homofobia a injúrias raciais. Utiliza o modelo tridimensional de Fairclough e conceitos de ideologia e dominação de Thompson. A análise foca em escolhas lexicais, estruturas gramaticais e recursos retóricos do voto. Os achados revelam estratégias discursivas de naturalização, reexame, ampliação e extrapolação.

Palavras-chave: Análise Crítica do Discurso; Discurso Jurídico; Criminalização da Homofobia; Supremo Tribunal Federal.

Abstract: This study applies Critical Discourse Analysis to a dissenting vote in Brazil's Supreme Federal Court. It examines Minister Cristiano Zanin's opposition to extending homophobia laws to racial insults. Using Fairclough's model, it explores ideology, domination, and rhetorical strategies in legal discourse. The analysis focuses on lexical choices, grammar, and rhetorical devices in the dissenting opinion. Findings reveal discursive strategies of naturalization, reexamination, broadening, and exceeding.

Keywords: Critical Discourse Analysis; Judicial Discourse; Homophobia Criminalization; Brazilian Supreme Court.

Resumen: Este estudio aplica el Análisis Crítico del Discurso a un voto disidente en la Corte Suprema brasileña. Examina la postura del ministro Cristiano Zanin contra ampliar la homofobia a insultos raciales. Utiliza el modelo tridimensional de Fairclough y los conceptos de ideología y dominación de Thompson. El análisis se centra en elecciones léxicas, estructuras gramaticales y recursos retóricos del voto. Los hallazgos revelan estrategias discursivas de naturalización, reexamen, ampliación y extrapolación.

Palabras llave: Análisis crítico del discurso; Discurso Jurídico; Penalización de la homofobia; Tribunal Supremo Federal de Brasil.

1 Initial remarks

1.1 Introduction

In September 2020, the Brazilian Supreme Federal Court (STF²) upheld the *Writ of Injunction* (WI) No. 4733, recognizing the legislative omission to criminalize homophobia and

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² In this work the acronym for Brazilian Supreme Federal Court chosen is STF.

determining the application of Law 7716/89, on racial crimes, also to discriminatory acts motivated by sexual orientation or gender identity.

The Brazilian Association of Lesbians, Gays, Bisexuals, Transvestites, Transsexuals and Intersexes (ABGLT), author of the injunction order, filed Motions for Clarification (MC) against the decision, arguing that it restricted the criminalization of homophobia only to the crime of racism, not covering racial insult.

A vote in the virtual trial, the rapporteur Minister³ Edson Fachin accepted the motions to extend the typification of homophobia also to racial insult. However, the Minister Cristiano Zanin dissented in his vote, understanding that the motions were not heard because they extrapolated the original request of the action.

This article will make a critical analysis of these dissenting arguments, from Minister Cristiano Zanin, which sought to hinder the recognition of homophobic insult as a crime, discussing its legal precedents and implications. Fairclough's (2003) framework for Critical Discourse Analysis (CDA) will be utilized as the theoretical basis for examining discourse.

1.2 Theoretical background - Discourse and CDA

Norman Fairclough (2003) conceptualizes discourse as inherently ideological and political in nature, being shaped by and reflective of power relations (Fairclough, 1995; 2001; 2003). I use his three-dimensional model approaches in the analysis, which are: i) social structure, ii) social practice and iii) social events (Fairclough, 1992). Those parameters allow for consideration of both micro-level linguistic features, macro-level social and political factors. Through this framework, the discursive construction of identity, power and ideology within the chosen rulings are discussed at the textual, intertextual and social levels.

The goal is to provide insight into the ways dominant ideologies and power structures are reproduced or challenged through language used. Grounding the analysis in Fairclough's critical approach, the intersection of discourse, power and social change can be explored epistemologically.

[CDA is] an approach that, with a broad scope of application, constitutes a theoretical-methodological model open to the study of various practices in social life, capable of mapping relationships between the linguistic resources used by social actors and groups of social actors and aspects of the network of practices in which critical discourse analysis

³ In this work we state the word Minister as corresponded to Ministro which in Brazilian law means judge in the supreme court.

is inserted. The main concepts of the discipline are discourse and social practice. (Resende; Ramalho,2006, p.11 and 12) (translated by the author)⁴.

Discourse can be understood as a way of talking, thinking, and behaving that is shaped by social, cultural, and historical contexts. It encompasses both spoken and written language, as well as non-verbal forms of communication. Van Dijk defines discourse as “the form that people make of language to convey ideas, thoughts, or beliefs within a social context” (1997, p.2). The perspective under consideration before aligns with Ruth Wodak’s discourse analysis framework below:

Any social phenomenon lends itself to critical investigation, to be challenged and not taken for granted [...] discourse means anything from a historical monument, a *lieu de mémoire*, a policy, a political strategy, narratives in a restricted or broad sense of the term, text, talk, a speech, topic-related conversations, to language *per se* (Wodak, 2009, p. 12 and 13).

In other words, discourse refers to the various ways people communicate with each other, whether through spoken conversations, written texts or even non-verbal cues. It plays a crucial role in shaping our understanding of social reality and power dynamics.

Moreover, CDA, in this paper, is a field that employs Systemic Functional Linguistics (SFL) developed by Michael Halliday (1985)⁵ as its foundational framework, which mainly discusses language not merely as a set of formal rules or isolated words, but as a dynamic system that serves multiple functions in communication.

There are, in the SFL perspective, 03 (three) interrelated aspects when coming to using this theory-method in Halliday (*op.cit*) to analyze discourses, aforementioned: a) interpersonal, which is the social exchange between speakers and listeners; b) representational, which regards to the external world and internal world and c) textual, which has to do with coherence and/or cohesive in the texts.

Besides, Jorgensen and Phillips (2002) states that the analysis is regarded from a grammatical standpoint to the context level. This choice is driven by the fact that CDA primarily focuses on textual analysis and interpretation through investigating how language users interpret and understand social and contextual messages communicated in linguistic texts (Yule, 2022).

⁴[ADC é] uma proposta que, com amplo escopo de aplicação, constitui modelo teórico-metodológico aberto ao tratamento de diversas práticas na vida social, capaz de mapear relações entre os recursos linguísticos utilizados por atores sociais e grupos de atores sociais e aspectos da rede de práticas em que a Análise de discurso crítica a interação discursiva se insere. Os conceitos centrais da disciplina são os de discurso e prática social (Resende e Ramalho,2006, p.11 e 12).

⁵ Introduction to Functional Grammar (1985).

Key concepts that help analyze how social practices⁶ are shaped by discourse, ideology, and power dynamics. They provide insights into how people create, reproduce, and transform social reality through everyday actions and communication. Below can be found those ideas concerning to Fairclough (2006 [1992]):

- a) Hegemony: The dominance of a particular group or ideology over others, achieved through alliances, consent and the incorporation of subordinate groups.
- b) Discourse: The use of language and communication to construct meaning, shape social reality and reproduce or challenge power relations.
- c) Intertextuality: The way texts refer to and draw upon other texts, shaping their meanings and contributing to broader discursive practices.
- d) Ideology: A system of beliefs, values and norms that justifies and maintains existing social structures and power relations.

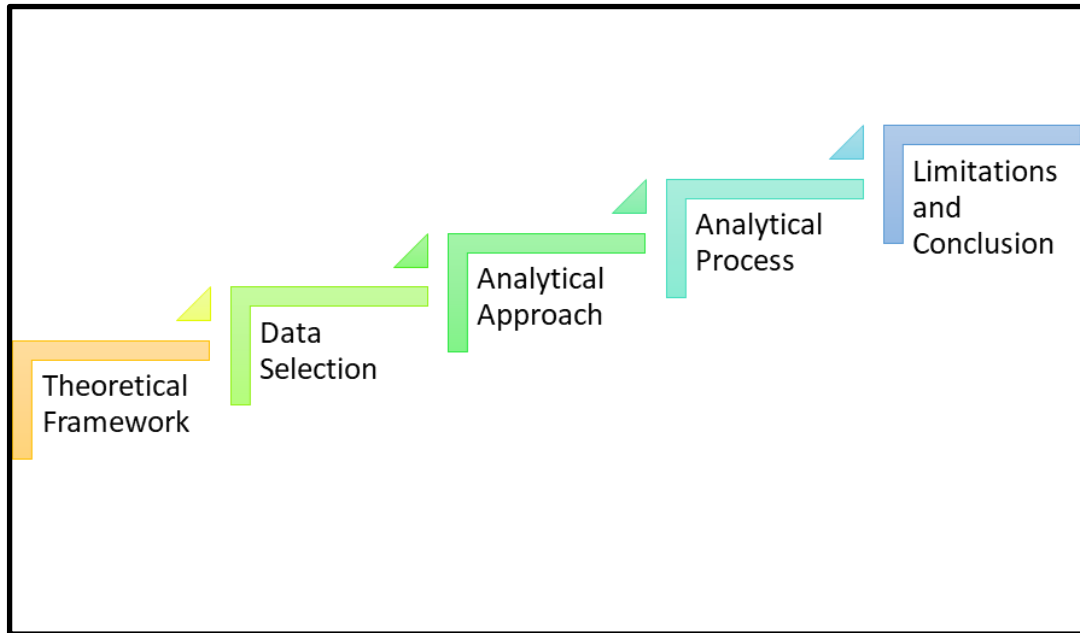
Lastly, scrutinizing linguistic patterns and structures, researchers gain insights into how language both mirrors and shapes social realities, this perspective underscores the importance of examining discourse beyond its surface features, recognizing that textual choices reflect underlying ideologies, power dynamics and social constructs. In the context of our analysis, the social practice examined is through the lens of ideology.

2 Methodology

This study employs Critical Discourse Analysis (CDA) as its primary methodological framework, drawing particularly on Fairclough's 2001 [1992] approach, coming to textual practice such as words selection and social practice as before mentioned. Additionally, Thompson's (2011) concepts of ideology and domination are incorporated to enrich the analysis and Fiorin (2015) perspectives of arguments.

The data for this study consists of a legal document, specifically a Supreme Court decision. This document was selected due to its significance in LGBTQIAP+ rights in Brazil.

⁶Refers to the everyday activities, behaviors and interactions that constitute people's lives within specific social contexts(Fairclough, 2006 [1992]).

Figure 1 - Step by Step

Source: Created by the author.

The analytical approach involves social and textual practices:

- 1) Lexical analysis: Examining specific word choices and their implications for power relations and ideology;
- 2) Grammatical analysis: Analyzing sentence structures, use of third person, and other grammatical features that contribute to the text's overall effect;
- 3) Rhetorical devices: Identifying and interpreting the use of techniques such as alliteration and parallelism and
- 4) Ideological analysis: Exploring how the language used constructs and reinforces power relations within the legal system.

The analytical process involved a close reading of the text, followed by the identification of key themes and linguistic patterns. Specific linguistic features were then analyzed in detail, with findings interpreted through the lens of CDA and ideological theories by Thompson (2011): i) Naturalization; ii) Reexamination; iii) Broadening and iv) Exceeding.

It's important to note that this methodology has limitations, including its focus on a single document and the potential for subjectivity in interpretation. However, the rigorous application of CDA principles helps to mitigate these limitations and ensure a robust analysis.

3 Analysis

The following table outlines the arguments presented by Minister Cristiano Zanin in denying the Motion for Clarification extracted from the vote at the STF's official website⁷. The genesis of this study is rooted in the concept of purported neutrality. This notion, often amplified by ministerial rhetoric, is deemed to be illusory, as it is posited that all discourse is inherently ideological. This remains true despite attempts to obfuscate the underlying ideological framework. The document in question was authored by the minister and has been retrieved directly from the official website of the Supreme Federal Court.

Reason	Argument
The MC seeks to reopen and broaden the merits of the original injunction, going beyond the limits of the initial petition.	The original petition was filed in 2019, at which time the crime of racial insult was clearly typified in the Penal Code as separate from the crime of racism under Law 7716/89. The Supreme Court's original decision granted the petition precisely within the limits requested, applying Law 7716/89 to acts of discrimination based on sexual orientation or gender identity. Extending the criminalization of homophobia to cover racial insults in a Motion for Clarification filed before jurisprudential and legal developments that equated them to racism represents improper reexamination and undue broadening of the original merit, exceeding the petition's limits. Due to the principle of congruence between petition and decision, it is not possible in this case to grant remedies other than those originally sought. Given the absence of alleged vagueness in the original decision, which granted the injunction per the exact terms of the initial petition, the current clarifying motion should not be acknowledged.

⁷ BRASIL. **Supremo Tribunal Federal**. Motion: 9942814-37.2012.1.000000. Available at: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=4239576> 15 Oct.2024.

The MC argues that the original decision was vague because it did not explicitly state that the criminalization of homophobia should extend to racial insults.

However, the original decision did not need to make this explicit statement because the crime of racial insult was already clearly typified in the Penal Code as separate from the crime of racism under Law 7716/89. Therefore, the MC argument that the original decision was vague is without merit.

The MC also argues that the original decision was erroneous because it did not apply Law 7716/89 to acts of discrimination based on sexual orientation or gender identity.

However, the original decision did apply Law 7716/89 to acts of discrimination based on sexual orientation or gender identity, precisely within the limits requested by MC argument that the original decision was erroneous and has no merit.

Conclusion In conclusion, the MC should not be acknowledged because it seeks to reopen and broaden the merits of the original injunction, going beyond the limits of the initial petition. The original decision was not vague or erroneous and the clarifying motion's arguments to the contrary are without merit.

Source: Summarized, translated and created by the author.

Fairclough (*op.cit*), in his framework of critical discourse analysis, posits that language is a medium for the exercise of power, and this is particularly evident in the context of legal language used in Supreme Court decisions. The employment of formal legal language and specialized legal vocabulary in these decisions serves multiple purposes.

Firstly, it establishes the authority of the court, setting it apart from other entities within the legal system. Secondly, it reinforces existing power dynamics between the court and other actors within the legal system. The specialized legal vocabulary used in Supreme Court decisions often remains inaccessible to laypersons, thereby consolidating the necessity of legal professionals and the court itself.

Moreover, the use of formal legal language and technical legal vocabulary can sometimes

obscure the implications of a decision, making it challenging for non-experts to comprehend its ramifications.

I am also thinking of the way in which a body as prescriptive as the penal system sought its bases or its justification, at first of course in a theory of justice, then, since the nineteenth century, in a sociological, psychological, medical, and psychiatric knowledge: it is as if even the word of the law could no longer be authorised, in our society, except by a discourse of truth. (Foucault, 2024[1971], p.6).

This obscurity can further reinforce power dynamics within the legal system by creating a knowledge gap between legal professionals and laypersons. Thus, according to Fairclough's (*op.cit*) analysis, language plays a crucial role in maintaining power structures within society.

The vote uses language to construct and reinforce power relations within the legal system. The lexical choices in the vote, such as the repeated references to "limits," "terms," "congruence," and not extrapolating original petitions, reflect a strict adherence to procedural norms. This language use emphasizes the procedural argument of the vote.

In terms of depicting domination relations as rightful, this can be seen in the way the vote uses reasoning and universalization, Thompson (2011). The vote presents its arguments as universally valid based on legal norms and procedures, which can be seen as a form of reasoning that legitimizes domination relations.

Furthermore, it inserts into a legitimizing history by adhering strictly to procedural norms. This can be seen as a narrative strategy to present the domination relations as part of a lawful and legitimate historical process.

The vote's use of language is, therefore, not neutral. It is designed to construct and reinforce power within the legal system. This is a form that is often invisible, but it is no less real. It can be seen in the extract below:

In these motions for clarification, ABGLT points to a clouding in the application of the decision under appeal, which supposedly removes the effectiveness of the aforementioned judgment, by restricting the recognition of homotransphobia to the crime of racism, preventing such practice from also constituting a crime of racial insult, when uttered against the justiciable honor of an LGBTQIA individual.(Brasil, 2023, p.2) (highlighted and translated by the author)⁸.

The dynamics of power are evident in the lexical selections of the author, particularly in the employment of the term "clouding" to denote concealment from visibility. This necessitates an

⁸Nestes aclaratórios, a ABGLT aponta obscuridade na aplicação da decisão embargada, que supostamente retira a efetividade do referido acórdão, ao restringir o reconhecimento da homotransfobia ao crime de racismo, impedindo que tal prática possa também configurar crime de injúria racial, quando proferida contra honra subjetiva de um indivíduo LGBTQIA+(Brasil, 2023, p.2) (Sublinhado do autor).

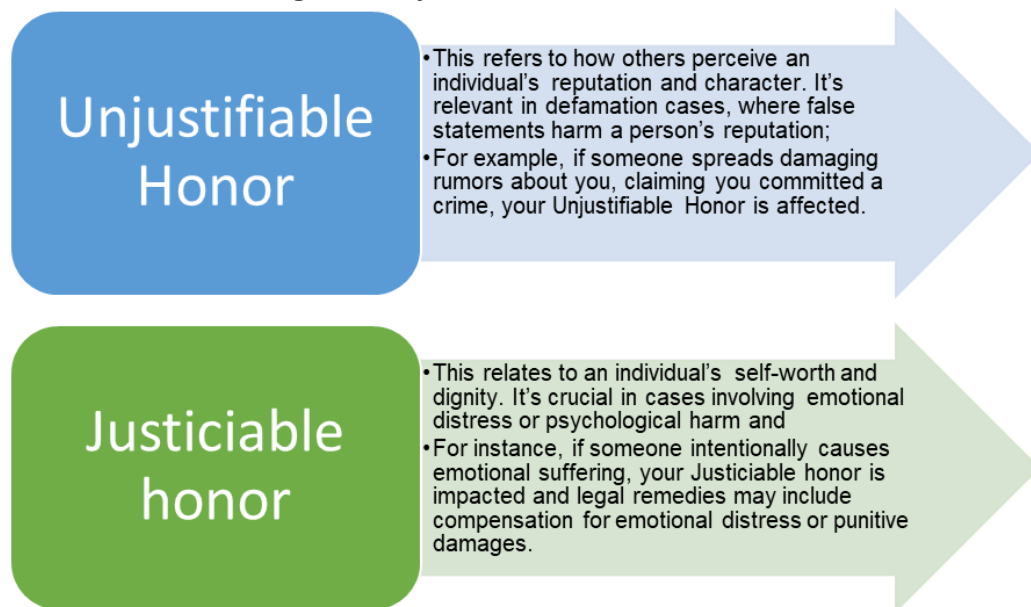
illumination for recognition by the general populace. Nonetheless, the proposed method suggests that such recognition is predominantly confined to those on the peripheries of society. This assertion is substantiated when the author deliberately chooses the adverb “supposedly,” which serves to underscore the viewpoint from a marginalized stance.

[discursive practices are] also showing how discourse is shaped by relations of power and ideologies, and the constructive effects discourse has upon social identities, social relations and systems of knowledge and belief, neither of which is normally apparent to discourse participants (Fairclough, 1992, p.12).

Fairclough(*op.cit*) postulates that discourses are invariably influenced by the interplay of power relations and prevailing ideologies. This influence persists despite the common belief in individual detachment from such ideological frameworks. The systemic structure ensures the inclusion of all societal members in these discursive processes. Consequently, ministers, as integral components of society, are not exempt from these ideological influences, which are also reflected in their decision-making processes.

It is also imperative to address the concepts of Justiciable Honor⁹ and Unjustifiable Honor¹⁰ within this discourse.

Figure 2 - Unjustifiable and Justiciable honor.



Source - Created by the author, inspired by STJ's¹¹ site.

⁹ We were unable to identify an exact equivalent for the Portuguese legal concept of *honra subjetiva*.

¹⁰ We were unable to identify an exact equivalent for the Portuguese legal concept of *honra objetiva*.

¹¹Brasil (2024) STJ - Superior Tribunal de Justiça. **Vocabulário Jurídico**. Online. *Versão 4.0.7 de 05/07/2024* 18:22. <https://scon.stj.jus.br/SCON/servlet/ThesMain?action=consultar&pesquisa=HONRA+SUBJETIVA> Accessed in July, 8th 2024.

When the minister asserts that the crime of homophobia pertains to justiciable honor, thereby associating it with the individual's self-esteem, it effectively absolves the collective responsibility to confront the prevailing notion that homophobia constitutes an opinion-based crime rather than categorizing it as unjustifiable honor, which would reflect the community's perception of the marginalized group.

The vote's use of language helps to maintain the status quo, making it difficult for those who are marginalized to challenge the system.

The vote's use of language is also a form of violence. It is a violence that is not physical, but it is no less real. It silences those who are marginalized, and it makes it difficult for them to be heard. This is a form of violence that is often overlooked, but it is no less harmful.

Frequent use of the third person conveys an air of objective detachment and authority. The dissenting Minister is positioned as the arbiter of proper procedure that can be explained:

Therefore, extending the classification of homotransphobia to the crime of racial insult in the context of motions for clarification filed before it was equated with the crime of racism, whether by case law (HC 154.248/DF, Min. Edson Fachin) or by law (Law 14.352/2023), is a clear hypothesis of retrial and expansion of the merits of the judgment, extrapolating the limits set in the initial petition. (Brasil, 2023, p.6 and 7) (translated by the author).¹²

The excerpt above embeds several rhetorical strategies, notably the utilization of third-person narration and passive construction. This approach ostensibly depersonalizes the discourse, despite the fact that the judge is, in essence, articulating a personal viewpoint influenced by his interpretations and line of reasoning.

Secondly, the use of legal jargons complicates understanding for laypeople, within the legal framework, this concept is entrenched in a discursive order that garners collective endorsement. Notwithstanding, it manifests an overt power, articulated through a distinctive choice of lexicon—a rhetoric that obfuscates actions.

Hence, the argument fulfills the concept of *secundum quid*, a Latin term often utilized in generalizations. The author articulates an inability to deliberate on the case's merits, citing an "extrapolation beyond the bounds established in the initial petition." This is indicative of a logical fallacy known as *a dicto secundum quid ad dictum simpliciter*, suggesting that the information

¹²Logo, estender a tipificação da homotransfobia ao crime de injúria racial em sede de embargos de declaração opostos antes de sua equiparação ao crime de racismo, seja jurisprudencial (HC 154.248/DF, Rel. Min. Edson Fachin), seja legal (Lei 14.352/2023), é clara hipótese de rejuízo e ampliação do mérito do julgado, extrapolando os limites fixados na petição inicial. (Brasil, 2023, p.6 and 7).

supplied by the petitioners is deemed insufficiently substantive for consideration (Fiorin,2015).

Finally, the *argumentum ad verecundiam*, which occurs when an authority concurs with the proposition in question. This is exemplified by the citation of another minister's agreement (Fiorin,2015).

The aforementioned actions are using the concepts of naturalization, timelessness and focusing attention & omitting actors created by Thompson (2011) so as Discursive practices,(Fairclough, 1992), which are related to the multitude of discourses that contribute to the formation of one's personal narrative:

A discursive formation consists of 'rules of formation' for the particular set of statements which belong to it, and more specifically rules for the formation of 'objects', rules for the formation of 'enunciative modalities' and 'subject positions', rules for the formation of 'concepts', and rules for the formation of 'strategies' (Foucault 1972: 31-9). These rules of formation are constituted by combinations of prior discursive and non-discursive elements (examples are given below), and processes of articulating these elements makes discourse a Social practice (Foucault uses the expression 'discursive practice') (Fairclough, 1992, p.40 and 41).

Naturalization: The use of third person is presented as a natural way to convey objectivity and authority. This could be seen as naturalizing the idea that third person usage inherently carries these qualities, when in fact this is a convention that has been socially constructed and could vary in different contexts.

This particular text under examination conveys the notion that there exists a degree of dissociation between the individual casting the vote and the target/focus of said vote. The language used suggests the voter maintains a certain level of detachment or removal from the direct object of their decision. This distancing is implied through the use of terms that create physical and/or conceptual separation between the voting subject and that which they are voting upon.

Under the principle of congruence, provided in articles 141 and 492 of the Civil Procedure Code (CPC/2015), I understand that it is not possible, in this case, to provide relief other than that sought. In these terms, given the absence of the alleged obscurity in the judgment under appeal, in which the claim was granted in the strict terms in which it was formulated in the initial petition, I understand that the present motions for clarification are not admissible. (Brazil, 2023, p.7) (translated by the author)¹³.

This implied separation could serve to lend an air of objectivity or impartiality to the act of voting by insinuating the voter casts their ballot from a vantage point of disinterest or non-

¹³Em virtude do princípio da congruência, previsto nos arts. 141 e 492 do CPC/2015, entendo que não é possível, in casu, prestar tutela diversa da pretendida. Nesses termos, ante a ausência da alegada obscuridade no acórdão recorrido, no qual foi dado provimento à demanda nos estritos termos em que formulado na petição inicial, entendo pelo não conhecimento dos presentes embargos de declaração.(Brasil, 2023, p.7).

involvement in the vote's effects, that happens, according to Aristotles (1378) because “

[...] We tend to believe someone who is honest rather than someone who is dishonest, someone who is sensible rather than someone who is not rigorous, someone who is straightforward rather than someone who is sneaky. [...] This is the image that is built up in the very act of saying, it is the image that one produces of oneself when speaking[...] (Fiorin, 2015, p.228 *apud* Aristotle, 1378, *Retórica*, II) (translated by the author)¹⁴.

Reexamination: This word suggests that the motion has been examined before and needs to be looked at again. It subtly implies that the previous examination might have been insufficient or flawed in some way, without directly saying so.

Broadening: This word implies that the current scope of the motion is too narrow or limited. It suggests that there are other aspects or perspectives that have not been considered, again implying a critique of the motion without directly stating it.

Exceeding: This word suggests going beyond the current motion or proposal. It implies that the motion is not enough or falls short in some way, again providing a critique without direct accusation.

The use of these lexicons allow for a critique of the motion while maintaining a tone of objectivity and rationality, as there is no impassioned rhetoric involved. This can be an effective strategy for expressing disagreement or proposing changes without causing unnecessary conflict or tension. For example, someone might say, “There might be a need to reexamine the motion to see if it is still relevant in light of the recent changes.” This statement does not directly say that the motion is flawed, but it does suggest that the motion may need to be changed.

Upon the discovery of a novel piece of information, which necessitates adherence to the principle of Need and Sufficient Causality (Fiorin, 2015, p.156), the proposition denoted as ‘A’, asserting “There might be a need to reexamine the motion ...”, is substantiated by the supplementary statement ‘B’, which declares the existence of a new fact warranting examination. Consequently, a sequence of causal events ensues.

Similarly, someone might say, "There might be a need to broaden the scope of the motion to include more perspectives." This statement does not directly say that the motion is too narrow, but it does suggest that the motion may need to be expanded. This statement reverts to the principle of Need and Sufficient Causality. It is not a necessity to incorporate additional viewpoints,

¹⁴tendemos mais a acreditar em alguém honesto do que alguém desonesto, em alguém sensato, do que alguém não criterioso, em alguém franco do que em alguém escorregadio. Isto é a imagem que se constrói no próprio ato de dizer é a imagem que se produz de si mesmo ao falar (Fiorin, 2015, p.228 *apud* Aristotle, 1378, *Retórica*, II).

however, it is adequately justifiable to do so.

Finally, someone might say, "I think we need to exceed the motion's goals." This statement does not directly say that the motion's goals are not enough, but it does suggest that the motion may need to be more ambitious. In accordance with Fiorin's implication model¹⁵ (2015, p.150), should the motion necessitate greater ambition, it is acceptable to disregard the previously submitted material.

It is important to note that these words can also be used to manipulate or deceive. For example, someone might use the word "reexamination" to suggest that a motion is flawed, when in fact they simply disagree with it. Or, someone might use the word "exceeding" to suggest that a motion is not enough, when in fact they simply want to see more change.

The propensity for distortion inherent in the utilization of these terms necessitates clarity and brevity in communication to preclude potential misinterpretations. This approach can serve as an efficacious tactic for articulating dissent or suggesting modifications, thereby circumventing superfluous discord or strain. Reference to the "absence of alleged vagueness" uses tentative phrasing (alleged, absence) to politely dispute the claim of vagueness, maintaining decorum: The phrase "absence of alleged vagueness" is a tactful way to disagree with a previous assertion that something was vague. It is a diplomatic way to say "I don't think it's as vague as you're making it out to be".

The word "alleged" indicates that the vagueness is a claim or accusation made by someone else, not a proven fact. It introduces doubt about the validity of the claim. The word "absence" indicates a lack or non-existence of something. In this case, it's CLAUs used to suggest that the claimed vagueness is not present.

Framing the disagreement in this way, the speaker avoids direct confrontation. They're not outright saying "you're wrong, it's not vague", but implying it by noting the absence of the claimed vagueness. This kind of phrasing helps maintain a respectful and professional tone in the discussion. It allows for disagreement and critique without resorting to personal attacks or heated language.

The phrase "absence of alleged vagueness" is a useful tool for anyone who wants to disagree with someone in a tactful and professional way. It can be used in a variety of settings, from business meetings to academic discussions.

¹⁵ Modo de Implicação (traduzido pelo autor).

Overall, the vocabulary and tone of the text reflects a formal, logical legal analysis. The author avoids overt persuasion or condemnation, and instead relies on appeals to procedure, logic, and precedent to support their argument. This approach is consistent with the conventions of legal writing, which typically aim to be objective and dispassionate.

The author's use of tentative phrasing, such as "alleged" and "absence," is also consistent with this approach. This phrasing allows the author to make their argument without directly attacking the opposing side. Instead, they focus on the evidence and the logic of their argument, leaving it to the reader to draw their own conclusions.

The author's use of rhetorical devices, such as alliteration and parallelism, is also effective in supporting their argument. These devices help to create a sense of order and logic, which makes the argument more persuasive.

4 Final Thoughts

This critical discourse analysis of Minister Cristiano Zanin's dissenting vote in the Brazilian Supreme Federal Court case on homophobia reveals the complex interplay between language, power, and ideology in legal discourse. Through the application of Fairclough's CDA framework, social practice and lexical choices, Thompson's concepts of ideology and domination and Fiorin's rhetorical perspectives, several key findings emerge.

Firstly, the analysis demonstrates how legal language, particularly in Supreme Court decisions, serves as a medium for the exercise of power. The use of specialized vocabulary and formal legal language not only establishes the authority of the court but also reinforces existing power dynamics within the legal system. This linguistic complexity often creates a knowledge gap between legal professionals and laypersons, further consolidating the power structures within the judiciary.

Secondly, the study uncovers many discursive strategies employed in the dissenting vote. The use of terms like "reexamination," "broadening," and "exceeding" subtly critiques the motion for clarification without resorting to direct accusation. This approach maintains a veneer of objectivity and rationality, characteristic of legal discourse. The frequent use of third-person perspective and tentative phrasing further contributes to an air of detachment and authority, positioning the dissenting Minister as an impartial arbiter of proper procedure.

Moreover, the analysis reveals how the vote's language constructs and reinforces power relations within the legal system. By adhering strictly to procedural norms and presenting

arguments as universally valid based on legal principles, the vote legitimizes existing power structures. This linguistic approach helps maintain the status quo, potentially making it more challenging for marginalized groups, such as the LGBTQIAP+ community, to challenge the system and achieve recognition of their rights.

The study also highlights how legal language can be a form of non-physical violence, silencing marginalized voices and making it difficult for them to be heard. This subtle form of linguistic oppression is often overlooked but can have significant real-world implications, particularly in cases involving minority rights.

In conclusion, this research underscores the importance of critically examining legal discourse, especially in high-stakes decisions affecting marginalized communities. It demonstrates how CDA can be a powerful tool for uncovering hidden ideologies and power dynamics in Supreme Court decisions. Exposing these linguistic mechanisms, this study contributes to a broader understanding of how legal language can either perpetuate or challenge existing social inequalities.

Future research could extend this analysis to a broader range of legal texts or compare discursive strategies across different types of cases. Additionally, exploring the reception and interpretation of these legal discourses by various stakeholders, including the LGBTQIAP+ community, could provide valuable insights into the real-world impact of such linguistic choices in legal decisions.

Ultimately, this study calls for greater awareness of the power of language in legal contexts and advocates for more inclusive and transparent legal discourse that can better serve all members of society, particularly those from marginalized communities.

References

BRASIL. (2023) **Supremo Tribunal Federal**. Motion: 9942814-37.2012.1.000000. Available at: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=4239576> 15 Oct. 2024.

BRASIL. (2024) STJ - Superior Tribunal de Justiça. **Vocabulário Jurídico**. Online. *Versão 4.0.7 de 05/07/2024* 18:22. <https://scon.stj.jus.br/SCON/servlet/ThesMain?action=consultar&pesquisa=HONRA+SUBJETIVA> Accessed on July, 8th 2024.

FAIRCLOUGH, Norman. **Discurso e mudança social**. Brasília: Ed. UNB, 2001 [1992].

_____. **Critical discourse analysis**. London: Longman, 1995.

_____. **Analysing discourse: textual analysis for social research**. London/New York:

Routledge, 2003.

FIORIN, José Luiz. **Argumentação**. São Paulo: Contexto, 2015. 272 p.

Hoey MP. **AN INTRODUCTION TO FUNCTIONAL GRAMMAR**. Michael A. K. Halliday. London: Edward Arnold, 1985. Pp. 384. *Studies in Second Language Acquisition*. 1988;10(1):84-87. doi:10.1017/S0272263100007051. Accessed on June,26th 2024.

Foucault, M. (2024[1971]) **The Discourse Order**. London: Routledge

Jørgensen, M. W., & Phillips, L. J. (2002). **Discourse analysis as theory and method**. London: Sage Publications. <https://doi.org/10.4135/9781849208871> Accessed on June,26th 2024.

RESENDE, V. de M.; RAMALHO, V. **Análise de discurso crítica**. São Paulo: Contexto, 2006

VAN DIJK, T. 'What is political discourse analysis?'. In: BLOMMAERT, J.; BULCAEN, C. **Political Linguistics**. Amsterdam: Benjamins, 1997, p. 11-52.

WODAK, Ruth; MEYER, Michael. **Methods for Critical Discourse Analysis**. SAGE Publications, 2009.

Yule, G. (2022). **The study of language**. Cambridge: Cambridge university press. <https://doi.org/10.1017/9781009233446> . Accessed on June, 26th 2024.