

THE PROCRUSTEAN BED IN THE BRAZILIAN SUPREME FEDERAL COURT

Fractures of Judicial Activism and Fissures in Constitutional Democracy

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INTRODUCTION: ULYSSES, PROCRUSTES, AND THE SONG OF THE SIRENS - BETWEEN THE MARK OF RUPTURE AND THE TEMPTATION OF JUDICIAL POWER

Georges Abboud, in classifying the different forms of judicial activism, employs the image of scars to portray the marks left by decisions that break with existing legality, deny the autonomy of law, and replace the Constitution with elements external to juridicity. The metaphor is drawn from the classical scene in the *Odyssey*, in which Ulysses, returning to Ithaca after twenty years of wars, shipwrecks, and trials, conceals himself under the appearance of a poor stranger. His identity remains hidden until Eurycleia, his old nurse, while washing his feet, touches the scar on his leg and recognizes the former king. The mark reveals what the disguise sought to conceal: the memory of the wound, the permanence of history, and the truth that resists appearance. (Homer, 2012; Abboud, 2025)

This article engages directly with Abboud's classification, but proposes a critical displacement of the metaphor. The image of the scar is literarily expressive, for it indicates that judicial activism leaves visible marks on the body of constitutional democracy. Nevertheless, it seems insufficient to describe the juridical and institutional gravity of the phenomenon. A scar suggests a wound already closed, an injury that, although permanent, belongs in some measure to the past. Judicial activism, however, is not merely the memory of a previous harm; it is an ongoing rupture in the functioning of constitutional adjudication. For this reason, the image of the fracture seems more appropriate: it indicates structural breakage, rupture of the normative axis, and loss of integrity in constitutional legality. (Abboud, 2025)

The fracture better conveys the moment in which a judicial decision abandons the Constitution, exceeds the limits of the text, relativizes fundamental guarantees, invades legislative competences, or replaces legal reasoning with personal morality, political

convenience, popular outcry, abstract efficiency, or the subjective will of the judge. In such cases, the Judiciary does not merely leave a mark on democracy; it breaks one of its supporting structures. The decision ceases to be the application of law and begins to function as a deformation of law. The scar reveals the mark; the fracture reveals the break. The scar refers to the past of the injury; the fracture exposes the present crisis of the constitutional structure.

To this image one may add the notion of fissure. If the fracture represents the most visible break in legality, the fissure indicates the progressive damage that spreads throughout the system. An isolated activist decision may appear to be only an exception. However, when decisions of this kind are repeated, normalized, and converted into a decisional pattern, constitutional democracy begins to be corroded from within. The fissure manifests itself in the loss of predictability, the weakening of the separation of powers, the erosion of trust in the Judiciary, the relativization of due process, the instability of precedents, and the formation of a kind of parallel Constitution shaped by decisions of circumstance. The fracture breaks; the fissure propagates.

The image of Procrustes allows one to understand with precision the internal functioning of judicial activism. In Greek mythology, Procrustes received travelers in his house and forced them to lie on an iron bed. If the body was larger than the bed, he cut off the excess; if it was smaller, he violently stretched it until it fitted the mold. Judicial activism operates in a similar way: when the Constitution is too large for the desired result, its normative force is cut down; when the law is too small to justify the intended conclusion, principles, open clauses, and vague concepts are stretched until they appear to authorize what they originally did not authorize. The decision no longer arises from law; rather, law is adapted to the previously desired result.

But Ulysses offers yet another decisive image: the episode of the Sirens' song. Warned that the Sirens seduced sailors with an irresistible voice, leading them to ruin, Ulysses orders his companions to seal their ears with wax and commands that he himself be tied to the mast of the ship. He wishes to hear the song, but knows that, if left free, he will succumb to seduction. For this reason, he imposes a prior limit upon himself. The image is powerful for thinking about constitutional adjudication: the Sirens of activism are many - the voice of the streets, media pressure, institutional vanity, the ego of judges, the desire for protagonism, moralism of circumstance, punitive outcry, the promise of efficiency, and the temptation to "save" society through judicial decision. (Homer, 2012)

In this sense, judicial self-restraint is not omission, institutional cowardice, or renunciation of the Judiciary's countermajoritarian role. It is Ulysses' mast. It is the mechanism through which the Court binds itself in advance to the Constitution, to statutes, to due process of law, to collegiality, to precedents, to rational reasoning, and to the limits of jurisdictional competence, precisely so as not to succumb to seductions external to law. Self-restraint does not prevent the Brazilian Supreme Federal Court from acting; it prevents it from acting as a power without limits. It does not deny constitutional adjudication; it preserves its legitimacy.

The recourse to mythology, therefore, is not ornamental. It functions as a hermeneutic, pedagogical, and critical instrument to make visible the deformations produced by the different forms of judicial activism. Abboud's classification provides the dogmatic structure of the debate; mythological images make it possible to illuminate, with greater explanatory force, the internal mechanisms of each modality. Echo helps one understand empty reasoning; the Oracle of Delphi, metaphysical ambiguity; Procrustes, the deformation of the text; Prometheus, the salvational temptation; Pygmalion, the Constitution shaped by moral preferences; the Bacchantes, popular outcry; the Erinyes, punitive vengeance; Daedalus, consequentialist engineering; Endymion, judicial inaction; Cronos, the administrative control of decisional time; and the Sirens, the seduction exerted upon the Judiciary by voices external to the Constitution.

The central hypothesis of this article is that judicial activism must be understood as a process of transition between fissure and fracture. The fissure emerges when the decision begins to move away from the Constitution, the law, and due process, even under apparently noble or technically sophisticated justifications. The fracture occurs when this practice becomes consolidated as a decisional method, affecting the structure of constitutional democracy. For this reason, the counter-majoritarian role of the Brazilian Supreme Federal Court, although indispensable, presupposes rigorous respect for the Constitution, statutes, and the existing procedural framework. Without these rules of the democratic game, constitutional adjudication ceases to protect the Constitution and begins to replace it with judicial power.

The purpose, therefore, is not to deny the importance of the Judiciary or to diminish the institutional strength of the Brazilian Supreme Federal Court. On the contrary, the critique of activism seeks to preserve the legitimacy of constitutional adjudication. A strong constitutional court is not one that can do everything, but one that, even in the face of political, social, and moral pressures, remains bound by law. Judicial independence requires institutional courage, but it also requires limits. Without Constitution, without statute, and without due process, the decision ceases to be adjudication and becomes will. And when judicial will occupies the place of law, the democratic fissure becomes a structural fracture of the Constitution itself. (Streck, 2017; Abboud, 2025)

1. ECHO AND PERFORMATIVE ACTIVISM: WHEN THE DECISION REPEATS WORDS WITHOUT SUBSTANCE

Echo was a nymph condemned to repeat the last words she heard. Her voice remained, but her speech no longer carried thought of its own. She uttered sounds, returned expressions, reproduced fragments, but could not construct autonomous meaning. Echo's tragedy lies precisely in this dissociation between voice and meaning: there is language, but no density; there is word, but no substance. (Abboud, 2025)

Performative activism operates in a similar way. The judicial decision preserves the appearance of reasoning, but relies on expressions that do not truly explain the legal basis of the judgment. Terms such as public interest, convenience and opportunity, justice,

proportionality, free motivated conviction, will of the law, and republican principle may be used as formulas of authority. The decision appears to speak the language of law, but often merely repeats grand words without demonstrating their concrete relation to the Constitution, the law, and the facts of the case. (Austin, 1975; Scavuzzi, 2017; Abboud, 2025)

The fracture here affects the duty to state reasons. The Constitution requires the judge to set out the legal reasons for the decision, allowing rational control by the parties, the legal community, and society. When the decision merely invokes vague expressions, without demonstrating why they lead to that result, the reasoning becomes merely apparent. Legal language ceases to explain and begins only to conceal the judge's will. (Scavuzzi, 2017; Streck, 2017; Abboud, 2025)

When it is said that a given result is required by "justice," without explaining which norm, principle, precedent, or concrete fact leads to that conclusion, the word justice functions like Echo's voice: it resounds, impresses, but does not justify. The same occurs when "public interest" is invoked to set aside legality, without legally demonstrating why the statutory rule should yield in that case. (Scavuzzi, 2017; Abboud, 2025)

1.1. THE ORACLE OF DELPHI AND METAPHYSICAL ACTIVISM: WHEN THE DECISION SPEAKS IN RIDDLES

The Oracle of Delphi was sought by kings, warriors, and travelers in search of answers about the future. Its messages were often ambiguous, open, and enigmatic. The force of the oracle lay precisely in the possibility that its words could be adapted to multiple meanings. After events had occurred, it always seemed possible to reinterpret the prophecy so that it would coincide with the result. (Abboud, 2025)

Metaphysical activism, a subcategory of performative activism, also feeds on open and indemonstrable formulas. Expressions such as "moralizing society," "making the country better," "fighting corruption at any cost," "realizing the common good," or "promoting a more ethical society" may serve to justify any decision. They are seductive formulas, but juridically dangerous when they replace the normative demonstration required by the Constitution. (Rüthers, 2016; Streck, 2017; Abboud, 2025)

The metaphysical fracture occurs when the judge abandons the plane of positive law and decides on the basis of abstractions that cannot be verified, refuted, or controlled. The decision then rests on a kind of moral prophecy: the court claims to act in the name of a better future, but does not demonstrate why the law in force authorizes that result. (Abboud, 2025)

A decision that sets aside procedural guarantees under the argument that it is necessary to "moralize the country" is not necessarily applying the Constitution. It may simply be replacing law with an abstract moral purpose, against which rational control becomes difficult to exercise. (Streck, 2017; Abboud, 2025)

2. PROCRUSTES AND ACTIVISM AGAINST THE LIMITS OF THE TEXT: WHEN THE CONSTITUTION IS CUT OR STRETCHED

Procrustes did not ask the traveler what his measure was. The measure was already fixed: it was the size of the bed. The body had to adapt to the bed, even if, for that purpose, it had to be mutilated or violently deformed. Reality was not received as it was; it was forced to fit a prior mold. (Abboud, 2025)

Activism against the limits of the text reproduces this logic. The interpreter already has the desired result and then proceeds to adjust the Constitution or the law to that result. If the text prevents the intended conclusion, its normative force is cut down; if the text is insufficient, its language is stretched. Interpretation ceases to be the juridical reconstruction of a possible meaning and becomes the deformation of normative material. (Müller, 2008; Abboud, 2025)

Text and norm are not identical, for the norm results from interpretation. However, the text is not irrelevant. It forms part of the normative program and limits interpretive possibilities. Outside properly reasoned constitutional review, setting aside the literal meaning of the law or of the Constitution transforms the Judiciary into an unpredictable instance of normative creation. (Müller, 2008; Abboud, 2025)

For example: when the Constitution establishes a certain competence or procedure and the court, without formal amendment of the constitutional text, redefines that institutional engineering through judicial decision, interpretation approaches the Procrustean bed. The text no longer guides the decision; rather, the decision adjusts the text to the desired result. (Müller, 2008; Abboud, 2025)

3. PROMETHEUS AND MESSIANIC ACTIVISM: WHEN THE JUDGE IMAGINES HIMSELF THE SAVIOR OF SOCIETY

Prometheus, moved by the desire to benefit humanity, steals fire from the gods and gives it to men. His gesture is civilizing, but also transgressive. The Promethean figure carries a powerful ambiguity: it represents the courage to confront power in the name of human beings, but also the risk of believing that a noble purpose authorizes the violation of higher limits. (Abboud, 2025)

Messianic activism arises from this Promethean temptation. The judge begins to see himself as an agent of historical salvation, as someone called to correct the failures of politics, moralize society, purify democracy, or lead the people to a higher civilizational stage. The decision ceases to be a legally adequate response to the case and becomes an instrument of collective redemption. (Dostoevsky, 2001; Abboud, 2025)

This modality is dangerous precisely because it is often accompanied by good purposes. Fighting corruption, improving democracy, protecting minorities, and correcting institutional pathologies are relevant objectives. The problem arises when such purposes are placed above the Constitution. In a constitutional democracy, no purpose, however noble it may seem, may authorize the rupture of the rules of the game. (Abboud, 2025)

For example: when a Court declares a legislative solution unconstitutional not because it clearly violates the Constitution, but because it believes that another solution would make politics purer, more efficient, or more moralized, adjudication assumes a messianic function. The court ceases to guard the Constitution and begins to guide society according to its own vision of institutional redemption. (Abboud, 2025)

4. PYGMALION AND IDEOLOGICAL-MORALISTIC ACTIVISM: WHEN THE JUDGE FALLS IN LOVE WITH HIS OWN CREATION

Pygmalion was a sculptor who, dissatisfied with real women, created a statue according to his ideal of perfection. He then fell in love with his own work. The image is suggestive: instead of receiving reality in its complexity, Pygmalion fabricates an object according to his own preference and comes to love it as though it were superior to the existing world. (Abboud, 2025)

Ideological-moralistic activism has a similar structure. The judge does not begin from the Constitution as it is, nor from legislation as it was democratically enacted. He begins from an ideal image of society, the State, freedom, morality, punishment, progress, or order. The decision then sculpts the law according to this image and, afterward, treats the judicial creation itself as if it were the true Constitution. (Chesterton apud Abboud, 2025; Abboud, 2025)

The critique of ideological-moralistic activism is not directed at any specific ideology. Activism may be progressive or conservative, left-wing or right-wing, liberal or punitive. The defect lies in removing the effectiveness of the law or remodeling the Constitution because the judge morally or politically disagrees with the normative choice made by the legislature. (Abboud, 2025)

For example: in matters such as abortion, homeschooling, political rights, or criminal policies, the Judiciary may be called upon to address morally sensitive questions. The problem does not lie in deciding such cases, but in replacing constitutional reasoning with personal philosophical convictions. When the opinion reveals more about the judge's worldview than about the answer juridically extracted from the Constitution, the decision approaches Pygmalion's sculpture. (Abboud, 2025)

5. THE BACCHANTS AND POPULIST ACTIVISM: WHEN THE VOICE OF THE STREETS REPLACES THE CONSTITUTION

In Greek tragedies, especially those surrounding Dionysus, the Bacchants represent collective ecstasy, the force of the multitude seized by impulse, passion, and lack of control. The individual dissolves into the group; reason yields to trance; the common voice becomes irresistible. The danger lies not only in the crowd, but in the belief that the intensity of outcry transforms collective desire into truth.

Populist activism occurs when the Judiciary exchanges law for a supposed popular will. Legality gives way to social outcry, the voice of the streets, pressure from social networks, or the diffuse feeling that a given decision "must" be made because society demands it. At that

moment, the court abandons its countermajoritarian function and begins to seek legitimacy in public applause. (Burke apud Abboud, 2025; Abboud, 2025)

Constitutional adjudication does not exist to follow the majority at all times. On the contrary, one of its most important functions is to protect fundamental rights against occasional majorities. When the Judiciary decides in order to respond to popular pressure, it becomes hostage to the same public opinion that, at another moment, it may need to oppose in order to protect the Constitution. (Abboud, 2025)

When a constitutional guarantee is relativized because society is supposedly tired of impunity, the decision may appear democratically attuned, but it produces a countermajoritarian fracture. The court exchanges its legal legitimacy for conjunctural popularity, opening fissures in the protective function of fundamental rights. (Abboud, 2025)

5.1. THE ERINYES AND PUNITIVE ACTIVISM: WHEN VENGEANCE WEARS THE ROBE

The Erinyes, or Furies, were ancient divinities of vengeance. They pursued those who had committed serious crimes, especially against the family and sacred order. They did not represent serene judgment, but relentless persecution. In Greek tragedy, the transition from the Erinyes to the Eumenides symbolizes precisely the attempt to replace vengeance with institutional judgment. (Camus, 2019; Abboud, 2025)

Punitive activism is the form through which the logic of the Furies invades adjudication. Punishment comes to be seen as the supreme purpose. Fundamental guarantees, the presumption of innocence, full defense, an impartial judge, criminal legality, and due process cease to be understood as pillars of the Constitutional State and begin to be treated as obstacles to efficient punishment. (Camus, 2019; Abboud, 2025)

The punitive fracture is profound because it transforms criminal procedure into an instrument for confirming guilt. The accused ceases to be a subject of rights and begins to be seen as a moral enemy. Adjudication, then, approaches institutionalized vengeance, even when clothed in sophisticated legal language. (Camus, 2019; Abboud, 2025)

For example: the execution of a sentence before final judgment, the judicial expansion of criminal offenses, the flexibilization of investigative guarantees, or resistance to institutions such as the judge of guarantees reveal the same tendency: punish first, justify later. In this model, the Constitution ceases to be a barrier against arbitrariness and begins to be viewed as an obstacle to penal efficiency. (Camus, 2019; Abboud, 2025)

6. DAEDALUS AND CONSEQUENTIALIST ACTIVISM: WHEN THE ENGINEERING OF RESULTS REPLACES LAW

Daedalus was the great craftsman of Greek mythology. He created the Labyrinth of Crete, an ingenious, rational, and impressive work. His technical intelligence was extraordinary, but his creations did not always produce liberation. The labyrinth, a symbol of ingenuity, also became a space of imprisonment, confusion, and loss of orientation.

Consequentialist activism has something Daedalian about it. The judge begins to act as an engineer of results, concerned with constructing the most efficient, useful, or practically adequate solution. Considering consequences is not illegitimate. The problem arises when efficiency, institutional impact, or social utility replaces the Constitution and the law as the grounds of the decision. (Abboud, 2025)

The consequentialist decision may appear sophisticated, but it runs the risk of transforming law into a labyrinth. The litigant no longer knows whether the norm, the precedent, the constitutional guarantee, or the consequence deemed most convenient by the court will prevail. The legal path becomes winding, and predictability is lost. (Abboud, 2025)

When a court alters the statutory regime of appealability, redefines the limits of a patrimonial guarantee, or restricts freedom of expression on the basis of prognoses of social impact, it must rigorously demonstrate why the Constitution authorizes such an operation. Without this control, consequentialism ceases to be prudence and becomes efficient decisionism. (Abboud, 2025)

7. ENDYMION AND ACTIVISM BY INACTION: WHEN JUDICIAL SLEEP SUSPENDS THE CONSTITUTION

Endymion, in Greek mythology, is associated with eternal sleep. Beauty remains, but movement ceases. The body is present, but action disappears. The image allows one to understand a silent form of activism: one that does not manifest itself through excessive decision, but through the absence of decision. (Lampedusa apud Abboud, 2025; Goncharov apud Abboud, 2025; Abboud, 2025)

Activism by inaction occurs when the Judiciary fails to act in situations in which the Constitution required action. The critique of activism does not mean a defense of judicial omission. There are cases in which self-restraint is a virtue; there are others in which inertia becomes a constitutional violation. The abuse of judicial review may produce activism, but the abuse of self-restraint may also prevent the realization of the Constitution. (Abboud, 2025)

This modality fractures the Constitution through silence. The decision does not appear as an explicit pronouncement, but its effects are concrete: legal uncertainty, maintenance of an unconstitutional state of affairs, preservation of indefinite injunctions, or postponement of fundamental issues. The court does not decide, but its omission decides for it. (Abboud, 2025)

The delay in the final judgment of issues such as imprisonment after a second-instance conviction - which should not even be “on the agenda” in light of the clarity of Article 5, LVII - or the implementation of the judge of guarantees may produce institutional effects as serious as those of an express activist decision. The Constitution remains suspended not by a word, but by prolonged silence. (Abboud, 2025)

8. CRONOS AND ACTIVISM IN THE ADMINISTRATIVE FUNCTIONS OF THE BRAZILIAN SUPREME FEDERAL COURT: WHEN CONTROLLING TIME MEANS CONTROLLING LAW

Cronos is the lord of time. In mythology, his figure is associated with control, succession, and the fear of being surpassed. Whoever dominates time also dominates the possibility of events. At the institutional level, time is not neutral: deciding when something will be judged may be as important as deciding the merits. (Abboud, 2025)

Activism in the administrative functions of the Brazilian Supreme Federal Court arises when administrative instruments of the Court - the docket, requests for review, maintenance of injunctions, determination of the moment of judgment, and control of the agenda - begin to produce relevant political and legal effects. Although activism is usually identified in the content of decisions, it may also occur through the management of decisional time. (Abboud, 2025)

The fracture here affects collegiality and institutional transparency. If a single-justice injunction suspends a law enacted by Parliament and the case is not promptly brought before the Plenary, the provisional decision becomes a lasting solution. If a case is released for judgment but not placed on the docket, administrative omission produces relevant legal effects. Time begins to function as an instrument of power. (Abboud, 2025)

The delay in placing actions of high constitutional relevance on the docket, especially when already released for judgment, may feed the perception of politicization of the Court. Even if there is no deliberate intention, the absence of objective docketing criteria creates fissures in the institutional legitimacy of the Court. (Abboud, 2025)

CRITICAL CONCLUSION: FROM THE SIRENS TO INSTITUTIONAL FRACTURES

Mythology allows one to visualize, in a more concrete way, the deformations produced by judicial activism. Echo represents empty reasoning; the Oracle of Delphi, metaphysical ambiguity; Procrustes, the deformation of the text; Prometheus, the salvational temptation; Pygmalion, the Constitution sculpted according to moral preferences; the Bacchantes, popular outcry; the Erinyes, punitive vengeance; Daedalus, consequentialist engineering; Endymion, inaction; Cronos, administrative control of decisional time; and the Sirens, the external seduction that attempts to capture the judge through the voice of the streets, the media, vanity, decisional ego, moralism, and social applause. Each image functions as a symbolic key to understanding a specific modality of rupture of constitutional legality. (Homer, 2012; Abboud, 2025)

The episode of the Sirens is perhaps one of the most important images for understanding the need for judicial self-restraint. Ulysses does not regard himself as immune to seduction. On the contrary, he recognizes his vulnerability. For that reason, he asks to be tied to the mast. This is the great institutional lesson: virtue does not lie in presuming that the judge will always be immune to power, applause, vanity, or salvational temptation; virtue lies in building legal bonds that prevent will from replacing law. At the constitutional level, these bonds are the Constitution, statutes, due process of law, collegiality, precedents, adequate reasoning, legal reservation, the natural judge, and the limits of competence.

Self-restraint does not mean silence in the face of constitutional violations. Nor is it confused with passivity, omission, or institutional fear. It means fidelity to the mast that prevents shipwreck: the mast of the Constitution. The Brazilian Supreme Federal Court can and must act countermajoritarianly when fundamental rights are threatened, when political majorities violate the Constitution, or when the other Branches exceed their limits. But such action remains legitimate only when carried out within the rules of the democratic game. The Court may hear the Sirens; it may not follow their music.

The central purpose of this article was to denounce the fissures that corrode constitutional democracy before they become institutional fractures. The fissure is, as a rule, less visible: it appears in rhetorical reasoning, in a prolonged injunction, in balancing without criteria, in an interpretation that discreetly exceeds the text, in an omission that leaves a relevant constitutional question indefinite, or in a decision made under the influence of public opinion. The fracture emerges when these fissures are repeated, accumulated, and normalized as a decisional method. At that moment, the problem ceases to be an isolated decision and begins to affect the very structure of constitutional democracy.

The countermajoritarian role of the Brazilian Supreme Federal Court is indispensable in a constitutional democracy. The Court must protect fundamental rights against occasional majorities, contain abuses by the other Branches, and preserve the normative force of the Constitution. However, this countermajoritarian function presupposes rigorous fidelity to the Constitution, statutes, and the existing procedural framework. The STF may oppose the majority, but it may do so only in the name of the Constitution; it may invalidate statutes, but only when their constitutional incompatibility is demonstrated; it may protect rights, but without abandoning the procedural rules that structure the democratic game itself.

The decisive point is that the countermajoritarian legitimacy of the STF does not arise from a moral superiority of the Court, nor from a generic authorization to correct politics, moralize society, or improve democracy according to its own institutional vision. The legitimacy of constitutional adjudication arises from its qualified submission to law. The Court is not legitimate because it decides against majorities; it is legitimate when it decides against majorities on the basis of controllable constitutional grounds. Without this bond, the countermajoritarian function degenerates into judicial voluntarism, and what should protect democracy begins to corrode it from within.

For this reason as well, respect for procedure cannot be treated as secondary formalism. Competence, adversarial proceedings, due process of law, the natural judge, collegiality, adequate reasoning, legal reservation, stability of precedents, objective limits of the claim, responsible modulation of effects, and observance of constitutional procedures are material elements of democracy. Procedural rules do not exist to obstruct justice, but to prevent justice from being confused with the will of the one who judges. When procedure is relativized in the name of the result, a fissure is opened in the Rule of Law; when this relativization becomes a pattern, the fissure becomes a structural fracture.

Constitutional democracy does not break only through evident coups, abrupt ruptures, or frontal attacks on institutions. It may also be corroded from within through small hermeneutic accommodations, successive exceptions, salvational decisions, performative formulas, discourses of efficiency, popular pressures, judicial moralisms, and administrative manipulations of decisional time. Each of these practices may appear, in isolation, justifiable. The risk lies in repetition: when the exception becomes method, the fissure becomes fracture.

In this sense, the critique of judicial activism does not weaken the Brazilian Supreme Federal Court; on the contrary, it protects its legitimacy. A strong STF is not one that can do everything, but one that, even while exercising a countermajoritarian function, recognizes the limits of the Constitution, statutes, and procedure. The authority of the Court is not preserved by the continuous expansion of its powers, but by the public demonstration that its decisions obey controllable legal criteria. The more the Court decides on the basis of law, the stronger it becomes; the more it decides through vague formulas, moral reasons, social pressures, or institutional conveniences, the more it exposes its authority to erosion.

The critical conclusion, therefore, is that judicial activism must be understood as a process of transition between fissure and fracture. The democratic fissure is born when the Constitution, statutes, and procedure cease to be limits and become materials adjustable to the desired result. The institutional fracture occurs when this practice stabilizes as a recurring mode of exercising jurisdictional power. At this stage, what exists is no longer merely expansive interpretation or judicial creativity: it is an informal mutation of the constitutional regime, in which the written Constitution begins to coexist with a parallel Constitution formed by decisions that redesign competences, relativize guarantees, and displace democratic choices.

For this reason, denouncing fissures is a way of preventing fracture. Constitutional critique must act before rupture becomes consolidated; it must identify the points of erosion before the institutional edifice loses its support. The countermajoritarian function of the STF remains essential, but precisely for that reason it must remain juridically bound. Like Ulysses before the Sirens, the Court must recognize that power also seduces. And, precisely for this reason, it must remain tied to the mast of the Constitution. Without Constitution, statute, and procedure, there is no legitimate constitutional adjudication: there is only power. And when adjudication ceases to be law and becomes power, the democratic fissure becomes a structural fracture of the Constitution itself. (Homer, 2012; Streck, 2017; Abboud, 2025);

- **Glossary**

Item	Explanation
Ulysses	Ulysses represents the inaugural figure of the reflection. In the <i>Odyssey</i> , he returns to Ithaca after a long absence, disguised as a stranger, until he is recognized by Eurycleia because of the scar on his leg. In the article, Ulysses is used to introduce the idea that

	<p>certain marks reveal hidden truths. In legal terms, judicial activism may present itself with the appearance of constitutional reasoning, but its marks denounce a rupture with legality and with the autonomy of law.</p>
Ulysses' scar	<p>The scar symbolizes the mark of a previous injury. In Abboud, the image is used to represent the marks left by judicial activism on constitutional democracy. The article engages with this metaphor, but considers it insufficient, because the scar suggests an already closed wound, whereas activism is a rupture still in progress.</p>
Eurycleia	<p>Eurycleia is the old nurse who recognizes Ulysses upon touching his scar. Symbolically, she represents the gaze capable of identifying what disguise attempts to conceal. In the critique of activism, she corresponds to constitutional dogmatics, rigorous hermeneutics, and academic critique, which perceive, behind the appearance of juridicity, the mark of judicial decisionism.</p>
Scar	<p>The scar indicates permanence of the wound, memory of trauma, and visible sign of a previous rupture. Although it is an expressive literary image, the article argues that it does not fully convey the institutional gravity of activism, because activism is not only a mark of the past, but a present break in constitutional legality.</p>
Fracture	<p>Fracture is the central metaphor proposed by the article as a partial replacement for the idea of the scar. It indicates structural breakage, rupture of the normative axis, and loss of legal integrity. Judicial activism fractures the Constitution when it exceeds its limits, relativizes fundamental guarantees, invades legislative competences, or replaces legal reasoning with morality, politics, efficiency, or social outcry.</p>
Fissure	<p>The fissure represents the progressive damage that spreads from the fracture. An activist decision may seem isolated, but when repeated and normalized, it opens fissures in constitutional democracy: legal uncertainty, loss of predictability, erosion of trust in the Judiciary, instability of precedents, and weakening of the separation of powers.</p>
Relationship between fracture and fissure	<p>The fracture is the moment of breakage; the fissure is the systemic propagation of damage. The fracture occurs when the decision breaks legality. The fissure appears when this rupture begins to affect the ordinary functioning of the constitutional</p>

	system. The article denounces fissures precisely to prevent them from becoming permanent institutional fractures.
Procrustes	Procrustes is the mythological figure who forced travelers to fit his iron bed, cutting those who were larger and stretching those who were smaller. In the article, he represents the activist judge who deforms the Constitution and the law in order to adjust them to a previously desired result.
Procrustean bed	The Procrustean bed symbolizes the prior mold of the decision. Before interpreting, the judge already knows where he wants to arrive. He then cuts the normative force of the Constitution when it stands in the way, or stretches principles and open clauses when the statutory text is insufficient. It is the strongest image of the hermeneutic deformation produced by activism.
Cutting the Constitution	Cutting the Constitution means reducing, neutralizing, or ignoring the normative force of constitutional provisions that prevent the desired result. The activist decision eliminates the normative “excess” in order to make the text fit the previously chosen decisional mold.
Stretching the law or principles	Stretching the law or principles means artificially expanding legal concepts, open clauses, or constitutional principles in order to justify a conclusion that the text did not authorize. It is a way of transforming interpretation into judicial creation without sufficient normative basis.
Sirens	The Sirens represent the seductive voices that attempt to capture the judge: the voice of the streets, the media, institutional vanity, judicial ego, punitive outcry, the promise of efficiency, moralism of circumstance, and the temptation to save society through judicial decision.
Song of the Sirens	The song of the Sirens symbolizes seduction external to law. In the article, it represents everything that attempts to distance the judge from the Constitution: social applause, media pressure, protagonism, moralism, populism, and the desire for public recognition. The danger lies not in hearing society, but in replacing law with its music.
Ulysses tied to the mast	Ulysses asks to be tied to the mast because he knows he is not immune to seduction. This image is used to explain judicial self-restraint. The constitutionally responsible judge does not

	presume immunity from power; for that reason, he accepts institutional bonds that prevent his will from replacing law.
Mast of the Constitution	The mast represents the Constitution, statutes, due process of law, collegiality, precedents, rational reasoning, legal reservation, and limits of competence. Just as the mast prevents Ulysses from following the Sirens, these elements prevent the Judiciary from succumbing to activism.
Wax in the sailors' ears	The wax in the ears may symbolize institutional mechanisms of containment: procedural rites, rules of competence, collegial control, adversarial proceedings, publicity, motivation, and procedural limits. They are barriers that prevent the institutional crew from being dragged by the song of populism, media pressure, or judicial vanity.
Judicial self-restraint	Self-restraint is not omission, cowardice, or renunciation of constitutional adjudication. It is fidelity to constitutional limits. It means recognizing that the Judiciary may and must act countermajoritarianly, but only within the rules of the democratic game. Self-restraint is the mast that preserves the Court's legitimacy.
Echo	Echo is the nymph condemned to repeat the last words she heard. In the article, she represents performative activism: decisions that repeat grand expressions - justice, public interest, proportionality, republican principle - but without sufficient normative density. There is legal language, but no true reasoning.
Performative activism	This occurs when the decision preserves the appearance of reasoning but relies on vague expressions that do not demonstrate the legal basis of the judgment. Legal language functions as rhetorical ornament, not as controllable argument. The fracture produced affects the duty to state reasons.
Empty reasoning	This is apparent motivation, constructed with expressions of strong rhetorical impact but incapable of demonstrating the relation between norm, fact, precedent, and conclusion. Empty reasoning prevents rational control of the decision and opens space for judicial voluntarism.
Justice as a performative utterance	The word "justice," when used without normative densification, may function as a subterfuge for activism. To say that one decides "in the name of justice" is not enough; it is necessary to

	demonstrate which norm, principle, precedent, or constitutional guarantee requires that result.
Public interest	Public interest may be a legitimate legal concept, but it becomes performative when used to set aside legality without concrete demonstration. The risk lies in transforming “public interest” into a synonym for the judge’s institutional preference.
Proportionality	Proportionality is a relevant legal technique, but it may be deformed when used as a magic word to justify any result. Without criteria of suitability, necessity, and proportionality in the strict sense, it becomes a performative instrument of decision.
Oracle of Delphi	The Oracle of Delphi spoke in riddles, with messages that were ambiguous and open to multiple interpretations. In the article, it represents metaphysical activism, in which broad and indemonstrable formulas replace legal reasoning.
Metaphysical activism	A subcategory of performative activism. It occurs when the decision relies on expressions such as “moralizing the country,” “fighting corruption at any cost,” “promoting a better society,” or “realizing the common good.” These are seductive formulas, but incapable of rigorous legal control.
Moral prophecy	Moral prophecy appears when the court decides in the name of a supposedly better future, without demonstrating why the law in force authorizes that solution. The decision ceases to apply the Constitution and begins to announce a moral, political, or civilizational promise.
Rüthers	Rüthers is associated with the critique of “acrobatic jurists,” that is, interpreters who use argumentative acrobatics to reach previously desired results. In the article, his idea dialogues with the use of metaphysical and performative formulas in judicial activism.
Streck	Streck appears as a reference to the need for a constitutionally adequate answer. His critique reinforces that judicial decisions must be reasoned, controllable, and bound by law, not by subjectivism, personal morality, or the judge’s will.
Procrustes and activism against the text	Procrustes is directly associated with activism against the limits of the text. This modality occurs when the judge exceeds the possible literal meaning of the Constitution or statute without

	proper methodological control. Law is cut or stretched according to the intended result.
Text and norm	Text and norm are not synonyms. The norm results from interpretation, but the text forms part of the normative program and limits interpretive possibilities. The article rejects both naive literalism and free interpretation that transforms the text into material available to judicial will.
Friedrich Müller	Müller is used to support the idea that the text composes the normative program. Although the norm is not identical to the text, interpretation cannot ignore textual limits. This idea is central to criticizing activism against the limits of the Constitution.
Normative force of the Constitution	The normative force of the Constitution means that the constitutional text must effectively limit power. Activism weakens this force when it treats the Constitution as flexible material, adjustable to the decisional preferences of the Court.
Prometheus	Prometheus steals fire from the gods to benefit humanity. In the article, he represents messianic activism: the judge who believes he may violate limits in the name of a greater good, a civilizational mission, or institutional salvation.
Messianic activism	This occurs when the judge sees himself as the savior of society. The decision ceases to be a legally adequate response to the case and becomes an instrument of political, moral, or civilizational redemption. The fracture occurs when noble ends are placed above the Constitution.
Salvational temptation	This is the belief that the Judiciary can correct politics, moralize society, or improve democracy through decisions that exceed constitutional limits. The article argues that no purpose, however noble it may appear, authorizes rupture of the rules of the game.
Dostoevsky	Dostoevsky appears as a literary reference to the figure of the subject who considers himself authorized to exceed moral or legal limits in the name of a superior purpose. This idea dialogues with messianic activism and with the logic of the judge who imagines himself above ordinary rules.
Pygmalion	Pygmalion creates a sculpture according to his ideal of perfection and falls in love with his own work. In the article, he represents ideological-moralistic activism: the judge who shapes the Constitution according to his ideal image of society.

Ideological-moralistic activism	This occurs when judicial decision is colonized by political, moral, or philosophical preferences. It may be progressive or conservative, left-wing or right-wing. The problem is not the specific ideology, but the replacement of law by the judge's personal convictions.
Sculpted Constitution	The sculpted Constitution is the Constitution shaped by the interpreter's moral preference. Instead of beginning from the constitutional text and the democratic process, the judge projects onto the Constitution his ideal vision of society, freedom, morality, punishment, or progress.
Chesterton	Chesterton appears as a reference to the ironic critique of divisions between progressives and conservatives. In the article, this reference reinforces that activism is not the monopoly of one ideology: it may occur on both the left and the right.
Bacchants	The Bacchants represent collective ecstasy, the multitude seized by impulse and passion. In the article, they symbolize populist activism, in which the voice of the streets, social networks, and social outcry attempt to replace the Constitution.
Populist activism	This occurs when the Judiciary decides according to a supposed popular will. Legality gives way to social outcry, media pressure, or the diffuse feeling that a certain response must be given. The fracture affects the countermajoritarian function of constitutional adjudication.
Voice of the streets	The voice of the streets represents majoritarian or media pressure on the Judiciary. Although society may and should criticize institutions, judicial decisions cannot be grounded in popular applause. The STF may hear society, but it may not decide in order to please it.
Countermajoritarian function	This is the function of protecting the Constitution and fundamental rights against occasional majorities. The STF may oppose the majority, but only in the name of the Constitution. When it decides to please the majority, it loses legitimacy to protect the majority against itself.
Burke	Burke appears as a reference to the critique of the temporary majority capable of destroying the Constitution by impulse or caprice. In the article, his idea reinforces that the Judiciary must not submit to the outcry of circumstantial majorities.

Erinyes	The Erinyes, or Furies, were divinities of vengeance. In the article, they represent punitive activism, in which punishment is regarded as the supreme purpose and fundamental guarantees as obstacles.
Eumenides	The passage from the Erinyes to the Eumenides symbolizes the replacement of vengeance by institutional judgment. In the article, this image reinforces that constitutional criminal procedure must contain social vengeance, not reproduce it in legal form.
Punitive activism	A subcategory of populist activism. It occurs when the Judiciary flexibilizes constitutional guarantees to respond to social desire for punishment. The presumption of innocence, full defense, due process, and legality begin to be seen as obstacles to penal efficiency.
Vengeance in robes	A symbolic expression for adjudication that abandons its guarantor function and begins to act as an instrument of moral punishment. The accused ceases to be a subject of rights and begins to be treated as an enemy.
Camus	Camus appears as a literary reference to the critique of the moral judgment of the person, and not only of the fact. The remembrance of <i>The Stranger</i> reinforces the danger of transforming the process into an existential judgment of the accused, rather than a legally controlled inquiry into conduct.
Presumption of innocence	A fundamental guarantee that prevents the anticipation of guilt before final judgment. In the article, its relativization by arguments of penal efficiency or social outcry is an example of a punitive fissure that may become a constitutional fracture.
Judge of guarantees	The judge of guarantees is treated as an institution that strengthens impartiality in criminal procedure. Its suspension or resistance to it may reveal a punitive logic when the guarantees of the investigated person are viewed as privileges or obstacles to punishment.
Daedalus	Daedalus is the great engineer of mythology, creator of the labyrinth. In the article, he represents consequentialist activism, in which the judge acts as an engineer of results, concerned with efficiency and practical utility.
Labyrinth	The labyrinth symbolizes the risk of an apparently sophisticated decision that imprisons law in unpredictable paths. When the

	court decides according to consequences without clear legal criteria, the system becomes labyrinthine.
Consequentialist activism	This occurs when efficiency, utility, institutional impact, or social convenience replaces the Constitution and statute as grounds for decision. Considering consequences may be legitimate; the problem is allowing them to occupy the place of law.
Efficiency	Efficiency is a relevant value, but it cannot prevail over constitutional guarantees, competence, legality, and procedure. When the decision sacrifices law in the name of a more efficient result, a consequentialist fissure is opened.
Legitimate consequentialism	Consequentialism is legitimate when it acts as an auxiliary element, for example, in the modulation of effects or in the responsible assessment of impacts. It becomes activist when it replaces the legal foundation of the decision.
Endymion	Endymion is associated with eternal sleep. In the article, he represents activism by inaction: the Judiciary that remains immobile in the face of relevant constitutional issues, producing effects through omission.
Activism by inaction	This occurs when the Judiciary fails to act in situations in which the Constitution requires action. Omission, delay, removal from the docket, or indefinite maintenance of injunctions may produce effects as serious as those of an express activist decision.
Judicial sleep	Judicial sleep symbolizes institutional paralysis. The Court does not decide, but its omission decides for it. The Constitution remains suspended not by an express word, but by prolonged silence.
Self-restraint	Self-restraint is a virtue when it preserves the separation of powers and the limits of adjudication. However, it may become illegitimate omission when the Constitution requires a decision and the Court abstains from acting. The article distinguishes legitimate self-restraint from activist inaction.
Lampedusa	Lampedusa appears as a reference to permanence under the appearance of change. In the context of activism by inaction, this reference helps one understand how omission may preserve problematic structures while simulating institutional prudence.

Goncharov	Goncharov, associated with the figure of Oblomov, reinforces the image of paralysis and inability to act. In the article, his reference connects to the Judiciary that omits itself in the face of relevant constitutional tasks.
Cronos	Cronos represents dominion over time. In the article, he symbolizes activism in the administrative functions of the STF, in which controlling the docket, requests for review, injunctions, and the timing of judgment may amount to controlling the practical outcome of the controversy.
Administrative activism	This occurs when administrative instruments of the Court produce relevant political and legal effects. The docket, delay, control of the calendar, and maintenance of injunctions may function as indirect forms of decision.
Decisional time	Decisional time is not neutral. Judging now, judging later, or not judging may profoundly alter the effects of a constitutional controversy. In the STF, control of time may become an instrument of power.
Docket	The docket is an administrative instrument, but it may have relevant constitutional effects. When a high-impact case is released and not placed on the docket, or when an injunction remains without collegial review, the docket begins to participate in the practical result of the decision.
Prolonged single-justice injunction	This is an individual decision that, although provisional, may produce lasting effects when not promptly submitted to the collegial body. In the article, it represents a fissure in collegiality and in the institutional legitimacy of the Court.
Collegiality	Collegiality is an institutional guarantee of plural deliberation in the STF. When individual decisions produce prolonged effects without review by the Plenary, the collegial function of the Court is weakened.
Parallel Constitution	The parallel Constitution is the set of jurisprudential solutions that, through the repetition of activist decisions, begins to coexist with the formal Constitution. It arises when case law redesigns competences, relativizes guarantees, or displaces democratic choices without formal amendment of the constitutional text.
Legality	Legality is one of the axes of the Rule of Law. In the article, activism fractures legality when it replaces statute and

	Constitution with judicial preferences, institutional convenience, or morally desired objectives.
Existing procedural framework	The procedural framework comprises competence, adversarial proceedings, due process, the natural judge, collegiality, reasoning, limits of the claim, precedents, and responsible modulation. These rules are treated as a material part of democracy, not as disposable formalities.
Rules of the democratic game	The rules of the democratic game are the Constitution, statutes, procedure, and institutional procedures that limit the exercise of power. The STF may act countermajoritarianly, but it may not abandon these rules without converting adjudication into power.
Due process of law	Due process is a guarantee against arbitrariness. It prevents the desired result from justifying the suppression of stages, competences, adversarial proceedings, or reasoning. When procedure is relativized in the name of efficiency or punishment, a fissure opens in the Rule of Law.
Natural judge	The natural judge guarantees that no one will be judged by an authority chosen on a case-by-case basis. In the context of the article, it protects against manipulations of competence and judicial rearrangements that adjust the process to the intended result.
Legal reservation	Legal reservation prevents sanctions, crimes, serious restrictions, or hypotheses of loss of rights from being created without formal legislation. Activism violates it when the Judiciary creates, expands, or redefines sanctions without adequate legislative basis.
Precedents	Precedents guarantee stability, coherence, and integrity. When formed hastily, without common reasoning, or outside proper procedures, they may become instruments of activism rather than mechanisms of legal certainty.
Modulation of effects	Modulation is a technique of legal certainty. In the article, it appears as a necessary instrument when judicial decisions alter consolidated understandings or produce relevant impacts. Without responsible modulation, the decision may surprise litigants and violate legitimate expectations.
Hermeneutic accountability	This is the need to control how courts interpret and reason their decisions. The article uses Abboud's classification and the

	myths as instruments of critical visibility, making it possible to identify when law has been replaced by another element.
Autonomy of law	The autonomy of law means that the decision must be legally reasoned and controllable. Law cannot be replaced by personal morality, politics, economics, media pressure, popular outcry, or desire for protagonism.
Decisionism	Decisionism is the decision founded primarily on the will of the judge, not on legal criteria. In the article, it is the common logic of the various forms of activism: performative, metaphysical, textual, messianic, moralistic, populist, punitive, consequentialist, omissive, or administrative.
Judicial voluntarism	Voluntarism is the expression of the judge's will as the real foundation of the decision. The decision may use constitutional language, but if its effective basis is subjective preference, there is voluntarism.
Moralism of circumstance	Moralism of circumstance is the use of moral arguments to justify decisions that exceed legal limits. It may appear in the fight against corruption, criminal policy, matters of custom, or attempts to moralize society by judicial decision.
Institutional vanity	Institutional vanity is one of the Sirens of activism. It arises when the Court or the judge seeks protagonism, public recognition, or political centrality, seduced by the idea of being the great moral arbiter of society.
Judicial ego	Judicial ego is the individual temptation to decide as a historical agent, social reformer, or superior interpreter of the Constitution. In the article, it appears as one of the seductive voices that require self-restraint.
Media	The media represents one of the external pressures capable of seducing the Judiciary. The problem is not public criticism, but a judicial decision that begins to seek media approval or respond to the communicational environment instead of applying law.
Punitive outcry	Punitive outcry is social pressure for immediate punishment, often to the detriment of constitutional guarantees. In the article, it connects to the Erinyes and to punitive activism.
Promise of efficiency	The promise of efficiency is one of the contemporary Sirens. It seduces the judge with the idea that a useful or swift result justifies the flexibilization of legality, procedure, and guarantees.

Legitimate constitutional adjudication	Constitutional adjudication is legitimate when it protects the Constitution within the limits of the Constitution. It may be countermajoritarian, but it cannot be voluntarist. It may invalidate statutes, but must demonstrate their constitutional incompatibility.
Strong STF	The article argues that a strong STF is not one that can do everything, but one that remains bound by law even in the face of political, social, moral, and media pressures. Institutional strength arises from limits, not from the unlimited expansion of power.
Critique of the STF	The critique of activism does not seek to weaken the STF, but to protect its legitimacy. The Court loses authority when it replaces the Constitution, statutes, and procedure with institutional will, social outcry, or political convenience.
Constitutional democracy	Constitutional democracy is not merely government by the majority. It is government limited by the Constitution, fundamental rights, separation of powers, legality, and due process. Judicial activism threatens this model when it transforms the Judiciary into a power without limits.
Democratic fissure	The democratic fissure arises when the Constitution, statutes, and procedure begin to be treated as materials adjustable to the result. It may appear small, but its repetition corrodes the constitutional structure.
Institutional fracture	Institutional fracture occurs when activism ceases to be an exception and stabilizes as a recurring mode of exercising jurisdictional power. At that point, there is no longer merely a problematic decision, but a structural alteration of constitutional democracy.
Structural fracture of the Constitution	This is the most serious stage of the process. The Constitution ceases to be a limit on power and begins to be replaced by a parallel jurisprudential Constitution shaped by judicial will.
Central hypothesis of the article	Judicial activism must be understood as a process of transition between fissure and fracture. Constitutional critique must identify fissures before they consolidate into institutional fractures.
Purpose of the article	To denounce the fissures that corrode constitutional democracy in order to prevent them from becoming fractures. The article uses Abboud as its dogmatic basis, but shifts the metaphor from

	scar to fracture/fissure and uses mythology as a hermeneutic, pedagogical, and critical instrument.
Final synthesis	Judicial activism is the deformation of law by judicial power. Procrustes shows the deformation of the text; the Sirens show external seduction; Ulysses shows the need for self-restraint; and the opposition between fissure and fracture shows the institutional risk. Without Constitution, statute, and procedure, there is no legitimate constitutional adjudication: there is only power.

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