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GUARDIAN IN A STATE OF EXCEPTION: THE BRAZILIAN JUDICIARY BETWEEN BELIEFS, POST-TRUTHS, AND EPISTEMIC CRISIS

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ABSTRACT

This article investigates the paradoxical role of the Judiciary as guardian of the Constitution in a post-truth context. The study focuses on Constitutional Law, with emphasis on judicial action during institutional crises. The research question is: to what extent does the Judiciary, acting in a state of exception to protect constitutional order, rely on ideological beliefs and non-local evidence? The objectives include analysing the central arguments of "Essay on Legal Blindness", "In the Mind or in the World?", and "Post-Truth and the Epistemological Crisis", integrating them into a critical reading of judicial activism and epistemic crisis. The methodology is inductive, based on bibliographical research of the three texts, situating them within the debate between law, society, and economy. The results indicate that the Brazilian Judiciary has operated in a "state of unconstitutional affairs", exceeding formal limits under the justification of protecting democracy. This conduct is influenced by progressive beliefs validated by technical-scientific consensus, which hinders public contestation. It is concluded that this conjunction of factors constitutes an epistemological crisis in law, demanding a review of institutional boundaries and greater epistemic self-criticism to preserve the rule of law.

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INTRODUCTION

The relationship between law, social development, and economy has been the subject of intense academic debate, especially regarding the role of the Judiciary. In recent decades, there has been a growing judicialisation of politics and social life, in which constitutional courts assume a leading role in resolving issues previously reserved for traditional political bodies. This phenomenon is acute in Brazil, where the Supreme Federal Court (STF)– the country's highest judicial authority and constitutional court, composed of eleven Justices appointed by the President and confirmed by the Senate, whose exercises judicial review, interprets the Constitution, and adjudicates cases involving constitutional and federal matters – has acted not only as guardian of the Constitution but also as a political actor in the face of institutional crises. Concurrently, we experience what some authors call the "post-truth era", characterised by extreme polarisation and a crisis of trust in epistemic authorities (media, science, institutions). In this context, legal decision-making does not occur in a vacuum: judges and courts are also influenced by the informational environment and collective beliefs about facts and evidence. Recent studies indicate that certain ideological beliefs may remain immune to empirical counter-evidence when based on diffuse evidence or dependent on scientific authorities. This raises the hypothesis that technical consensus and political convictions may subtly guide judicial decisions, conferring a cognitive bias that is difficult to detect or contest.

Given this scenario, this article seeks to investigate a central question: how does the Judiciary, acting activistically to protect the Constitution, interact with the phenomenon of post-truth and prevailing ideological beliefs? In other words, it examines whether and how judicial activism—often justified by the defence of rights and democracy—may be grounded in an epistemological substrate influenced by non-local evidence (i.e., not directly accessible to interested parties) and naïve realisms, as conceptualised in recent literatur. To this end, three paradigmatic texts are used as theoretical references: (i) "Essay on Legal Blindness – The State of Exception in a New Phase"[1], by Martinez and Scherch, which provides a juridico-political perspective on the extraordinary action of the STF in Brazil; (ii) "In the Mind or in the World? Types of Beliefs and the Locality of Evidence", by Sommer [2], which offers a cognitive psychology view on types of beliefs and their relation to available evidence; and (iii) "Post-Truth and the Epistemological Crisis"[3], by Friedman,

[1]Vinício Carrilho Martinez & Vinícius Alves Scherch, *Essay on Legal Blindness – The State of Exception in a New Phase*, Atâtôt – Revista Interdisciplinar de Direitos Humanos 4(1): 34–50 (2023), available at: https://www.revista.ueg.br/index.php/atatot/article/view/13643(last visited Nov. 19, 2025).

[2]Joseph Sommer, *In the Mind or in the World? Types of Beliefs and the Locality of Evidence*, PsyArXiv (2023), available at:https://doi.org/10.31234/osf.io/utrzv(last visited Nov. 19, 2025).

[3]Jeffrey Friedman, *Post-Truth and the Epistemological Crisis*, Critical Review 35(1–2): 1–21 (2023), available at: https://doi.org/10.1080/08913811.2023.2221502(last visited Nov. 19, 2025).

which analyses the contemporary epistemological crisis marked by the conflict between right- and left-wing naïve realisms. The methodology consists of bibliographical and qualitative analysis of these texts, followed by a critical synthesis that concatenates them, seeking to answer the proposed research question. Thus, the development of the article is organised into seven sequential sections: sections 1, 3, and 5 present, respectively, the main points and concepts of each of the three base texts; sections 2, 4, and 6 provide critical and integrative analysis of each text, establishing connections between them and highlighting the legal implications of their findings for understanding contemporary judicial activism; and, finally, section 7 analyses specific cases in which the STF acted under the aegis of post-truths based on third-person realism with a leftist bias. It is expected that this work, by articulating approaches from Constitutional Law, cognitive psychology, and political philosophy, will provide an unprecedented and interdisciplinary understanding of the phenomenon under study. The thesis maintained is that the Judiciary, by assuming expansive functions in defence of the Constitution, ends up illustrating a paradox diagnosed by Martinez and Scherch—a kind of "legal blindness" that leads it to operate outside the constitutional framework—and that such a condition is fuelled by epistemological factors: namely, trust in truths deemed self-evident by the filter of scientific authority or Enlightenment "common sense". Ultimately, it will be discussed how this symbiosis between judicial activism and post-truth beliefs poses challenges to the rule of law and the democratic legitimacy of judicial decisions, as well as possible avenues for reflection to mitigate the epistemological crisis within the legal sphere.

Legal Blindness: Diagnosis of Core Points and Dogmatic Implications

The article "Essay on Legal Blindness – The State of Exception in a New Phase", by Vinício Carrilho Martinez and Vinícius Alves Scherch, offers a critical reflection on the actions of the State and, in particular, the Judiciary under conditions of democratic abnormality. The authors work with the hypothesis that we are experiencing a new phase of the state of exception, characterised by coups against the constitutional order carried out "under the guise of protecting the normative order itself" [4]. In other words, exceptional measures—outside ordinary rules—are being taken by actors claiming to defend the Constitution, thus configuring a paradoxical phenomenon they call the "state of unconstitutional affairs". In the introduction, Martinez and Scherch clarify that their text is an essay, marked more by open questions than by answers [5]. They situate the problem in the absence of a consolidated theoretical corpus or definitive judicial decisions on the matter, given the contemporary and evolving nature of the events analysed—such as the COVID-19 pandemic and the political-institutional instability in Brazil since 2016. From this starting point, the article is divided into three parts: (i) theoretical and historical references on the state of exception; (ii) considerations on constitutional normality; and (iii) reflections on the Constitution and the state of exception in the current context. In the first part, entitled "Some References", the authors revisit the classical concept of the state of exception formulated by Giorgio Agamben [6] and its limitations in the face of contemporary "political realism". They argue that such exception adapts to the "circumstances of power" and, paradoxically, even proposals for a "legitimate state of exception" emerge—popular and libertarian (referencing Walter Benjamin's "Theses on the Philosophy of History")—to confront bourgeois rule-of-law states [7]. This theoretical discussion marks the tension between different forms of exception—some serving capital, others serving collectivism. In the second part, "Constitutional Normality(?)", the authors question the meaning of constitutional normality. According to them, within the framework of the Democratic State of Law inaugurated by the 1988 Federal Constitution (CF/88), normality would be associated with the independence of powers, respect for legal rites and forms, and observance of the principle of legality[8]. Citing Konrad Hesse and Carl Schmitt, they recall that the Constitution has normative force and that ultra vires acts—extra petita, infra petita, or contra petita—should be avoided. In practical terms, no public authority should act beyond, against, or below what the law permits[9]. However, this formalist conception of normality is confronted by the reality analysed: the authors introduce the concept of the state of unconstitutional affairs, in which the Judiciary (especially the STF) acts exceptionally to enforce the Constitution. They ask: "Does the Judiciary (STF), by deciding in this way, not act supra petita? […] Is not a huge paradox established here—acting beyond the Constitution, so that, precisely, the positive object of CF/88 is enforced?" [10]. Thus, they make explicit the central legal paradox: the guardian of the Constitution places itself "outside" it in order to supposedly guarantee it.

This figure of the state of unconstitutional affairs was imported by the STF from Colombian jurisprudence (where it is called estado de cosas inconstitucional), and presupposes three premises: (i) widespread violation of fundamental rights affecting many people; (ii) repeated inability of public bodies to solve such violations; and (iii) the need for positive structural actions by the Public Power to remedy the unconstitutionalities [11]. In the third and final part, "Constitution and State of Exception", the essay deepens the discussion on the role of the STF in the face of the advance of political forces in Brazil (notably after 2016). The authors ask whether the STF is responding to the right-wing spectrum democratically elected in 2018. That is, the STF would be using exceptional powers (such as ex officio inquiries to contain alleged fake news and anti-democratic discourse, suspension of laws contrary to the Constitution without traditional provocation, etc.) to counter a media context of alleged institutional rupture. The authors acknowledge that there are no ready answers and that their effort is more about problematisation. In the conclusion, they reinforce the ambivalence of such a scenario: on the one hand, "it is emphasised that the STF would be acting under the reservation of being the guardian of the Constitution" [12], that is, justifying its heterodox actions based on the constitutional mandate to protect rights and the CF/88 itself; on the other hand, they warn of the risks of normalising exception, even if well-intentioned. They underline that, far from being a full antidote to exception, the Judiciary, by imposing itself with a destabilising force, may restore normality abnormally [13]. In other words, there is the danger that, in combating authoritarian fires, the Judiciary itself may end up violating fundamental principles of the rule of law (such as due process of law, strict legality, legal certainty). Such a phenomenon would constitute a kind of "legal blindness": not perceiving that, by saving the Constitution outside its terms, there is a risk of harming it procedurally and, in the future, legitimising that anti-democratic powers invoke similar exceptions for perverse ends. This conclusion therefore invites critical reflection on the limits and legitimacy of judicial activism in times of crisis.

Guardian of the Constitution and Judicial Activism: A Critical Analysis: Based on the points summarised above, the fundamental paradox identified by Martinez and Scherch becomes evident: the STF, designated as the ultimate guardian of the 1988 Constitution, has in recent years adopted a posture of exceptional judicial activism, acting beyond traditional legal channels and parameters under the justification of protecting the Constitution and democracy itself. In this logic, the Court seeks to "save" the threatened constitutional order—whether due to the omission of other branches in safeguarding fundamental rights or the rise of political forces contrary to constitutional values—even if this implies exceeding its typical functions [14]. Thus, it is a supra petita action, an ultra-activist performance that generates a dilemma: can the guardian of the

[4]Vinício Carrilho Martinez & Vinícius Alves Scherch, supra note 1, at 34.
[5]*Id.* at 35.
[6]Giorgio Agamben, *State of Exception* (São Paulo: Boitempo 2004).
[7]*Id.* at 37.
[8]Vinício Carrilho Martinez & Vinícius Alves Scherch, supra note 1, at 38.
[9]*Id.* at 38.
[10]*Id.* at 39.
[11]*Id.* at 39.
[12]Vinício Carrilho Martinez & Vinícius Alves Scherch, supra note 1, at 44.
[13]*Id.* at 48.
[14]*Id.* at 39.

Constitution violate constitutional rules to ensure the prevalence of the material Constitution?

From a strict legal perspective, such conduct collides with the pillars of democratic constitutionalism. The 1988 Constitution established formal mechanisms for change and defence of the legal order—such as constitutional amendments and federal interventions approved by the Legislature—which privilege the political and participatory route. When the STF, on its own initiative, inaugurates figures such as the state of unconstitutional affairs or ex officio judicial inquiries to suppress threats, it deviates from the original design of checks and balances. This observation echoes the criticism that Brazil is experiencing a phenomenon of "Supremocracy", in which the Supreme Court assumes prerogatives beyond its remit. The "Essay on Legal Blindness" reinforces this point by emphasising that "it clearly exceeds the formal logic to act outside the Constitution so that, precisely thus, the Constitution is fulfilled" [15]. In other words, there is a danger that the STF—under the pretext of pursuing noble objectives—breaks the legal forms that confer legitimacy, opening a precedent for permanent exceptionality. In a scenario of systemic risk, sectors of civil society and the legal community have come to view the STF as a last bastion capable of containing authoritarian tendencies—a de facto "Moderating Power". This explains the significant support for unorthodox measures adopted by the Court, such as: ordering the arrest of government supporters accused of attacking democracy (in Inquiry No. 4781, controversial for having been initiated ex officio by the STF itself), suspending presidential decrees allegedly contrary to scientific evidence, or mandating the implementation of emergency public policies. In all these fronts, the STF invoked the defence of entrenched clauses (fundamental rights, separation of powers, democratic clause) to expand its action. Thus, according to the authors, from a teleological perspective, judicial activism emerges as a reaction to a power vacuum or abuses by other actors, seeking to prevent the complete erosion of the Constitution.

This ambivalence—formal illegality versus substantive legitimacy—connects to a central theme of Martinez and Scherch's article: the dichotomy between legality and legitimacy. In normal contexts, both go together; in exceptional contexts, they may collide. The STF, relying on the material legitimacy of its actions (protection of democratic values), assumed the burden of relativising strict legality. As the authors note, the Court acted "with a view to guaranteeing the preservation of constitutional normality"[16], that is, violated the norm to save the principles behind the norm. This logic is reminiscent of Carl Schmitt's thought on the guardian of the Constitution—who, in critical moments, is not bound by positive norms, but by the underlying fundamental order. One could argue that the STF itself embodied the Schmittian "sovereign" who decides on the exception[17], claiming for itself the competence to determine when the legal order is insufficient and requires intervention to preserve the "existence of the State". However, adopting a critical angle inspired by the liberal tradition and legal guarantees, this path is alarming. Once the barrier of the rule of law is broken, even for good causes, there is a risk of instituting a culture of permanent exception [18]. Martinez and Scherch invoke this concern by asking what the limits of the state of unconstitutional affairs would be and how to ensure that such an exceptional expedient is not invoked in the future by governments of the day, distorting its premises. History offers sombre lessons of normalised exceptions that paved the way for abuses—for example, the frequent use of state of siege decrees in Brazil's Old Republic ended up legitimising routine authoritarian interventions. Thus, the suggested criticism is that the STF, by continuing on this activist path, may become a victim of "blindness" regarding long-term implications: it would be weakening the culture of self-restraint and respect for forms, pillars without which the very discourse of rights loses strength. Another relevant aspect is the underlying political-ideological bias of this judicial activism. Although Martinez and Scherch are discreet about this, it can be inferred from the text that the STF's modus operandi largely benefited agendas identified with a progressive or left-wing orientation, especially in matters of social policy and minority protection. Indeed, during the period analysed, the Court made decisions aligned with historical demands of social movements and left-wing parties—for example, criminalising homophobia by equating it with racism (ADO 26), ensuring the continuity of indigenous land demarcation against ruralist attacks, and blocking environmental setbacks by the Executive. These outcomes led conservative segments to accuse the STF of partiality or of usurping the role of the Legislature to implement a "left-wing agenda". From this perspective, the predominance of progressive agendas would not be a coincidence, but the expression of ideological convictions shared by the legal elite.

The "Essay on Legal Blindness" touches on this issue by pointing out that the state of unconstitutional affairs in Brazil has been directed against an alleged "militia-style and Bonapartist fascism" and against "predatory capitalism" originating from 2016 [19]. In other words, the STF's exceptional actions have been oriented against political actors clearly identified with the right. It follows—although the authors do not state it directly—that there is an ideological component in the Court's motivation: the 1988 Constitution enshrines a project of a social and democratic state of law that, in the current reading, is irreconcilable with authoritarian or ultra-liberal projects. Thus, in defending the Constitution, the STF ends up objectively favouring the ideological field aligned with the constitutional values of the Brazilian left. This finding will be important to articulate with the reflections of the next texts (Sommer and Friedman) regarding beliefs and naïve realism, as it suggests that the Brazilian Judiciary, in the period in focus, acted driven by a belief—that certain values (coinciding with those of the liberal left) were incontestable truths to be preserved. In summary, the critical analysis of the "Essay on Legal Blindness" reveals a Judiciary in a position of protagonism extracted from the margins of the legal order, in an effort to save the threatened Constitution. This rescue, however, carries tensions and potential side effects: it challenges the principle of separation of powers, risks corroding the normative authority of laws, and reflects specific ideological choices. This dilemma can be synthesised as follows: the STF, in attempting to combat a fanciful political arbitrariness, flirted with judicial arbitrariness, driven by the conviction of serving a higher cause. This dynamic raises the question: to what extent did the judges' own beliefs about what constitutes a "higher cause" influence their decisions and justify, in their minds, the adoption of exception? To answer this question, it is appropriate to explore the cognitive and epistemological dimensions that underpin judicial decisions in contexts of polarisation and crisis. It is at this intersection between law and cognition that the next topics, based on the texts by Sommer and Friedman, will provide further insights.

In the Mind or in the World? Law as Mental Construction or Social Phenomenon

In the article "In the Mind or in the World? Types of Beliefs and the Locality of Evidence", cognitive scientist Joseph Sommer examines the differences between types of beliefs and how the availability of evidence influences the tenacity or flexibility of those beliefs. Sommer's central aim is to explain, based on psychological theories and everyday examples, why some beliefs—especially ideological, political, or religious—seem immune to counter-evidence, while simpler, empirical beliefs are easily adapted in the face of new evidence [20]. Sommer begins by noting that, intuitively, we perceive two distinct types of beliefs. On one hand, there are "testable" or factual beliefs, such as "the sky is blue" or "there is beer in the fridge"; these beliefs refer directly to the observable world, readily guide behaviour, and are easily revised when confronted with contrary evidence [21]. For example, if someone opens the fridge and

[15] *Id.* at 39.
[16] *Id.* at 38.
[17] Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Belo Horizonte: Del Rey 2006).
[18] Agamben, supra note 6.
[19] Vinício Carrilho Martinez & Vinícius Alves Scherch, supra note 1, at 37.
[20] Joseph Sommer, supra note 2, at 3.
[21] *Id.* at 2.

finds no beer, they will update their belief and perhaps add beer to the shopping list. On the other hand, there are beliefs of an ideological, political, or religious nature that are not so directly testable, rarely demand concrete action, and seem impervious to evidence [22]. These two sets of beliefs roughly correspond to categories described by psychologists such as Abelson (1986) as "beliefs" vs. "distal beliefs", Sperber (1997) as "intuitive beliefs" vs. "reflective beliefs", and Van Leeuwen [23] as "factual beliefs" vs. "credences". The novelty of Sommer's approach, however, lies in dispensing with the idea that there are qualitatively distinct psychological types of belief. Instead, he suggests an alternative explanation based not on intrinsic differences of the mind, but on characteristics of the "texture of the environment".

Drawing inspiration from theorists of the 1950s (such as Egon Brunswik and Jerome Bruner), Sommer argues that the key to understanding the divergence between those beliefs lies in the concept of "evidential locality". This involves assessing how much directly accessible evidence supports a given belief, as opposed to evidence that is distant, diffuse, or dependent on intermediaries [24]. He proposes that beliefs vary along a continuum regarding the proportion of local versus non-local evidence that underpins them. At the extremes of this continuum, Sommer identifies two paradigmatic cases: on one side, logical deduction is the example of totally local evidence, since in a deductive inference all the information needed for the conclusion is already contained in the premises—no external information is required. Thus, deductive conclusions, although tautological, are certain (non-ampliative, do not expand knowledge beyond what is already given) [25]. On the other side, a completely "isotropic" domain (in Fodor's sense, 1983) represents the opposite case: a situation in which virtually any information in the world could be relevant to evaluating a belief [26]. In such domains, the evidence needed to support or refute a belief is so dispersed (non-local) that it is practically impossible to gather it fully, allowing disagreements to persist indefinitely [27]. Politics and religion approach this isotropic pole: for example, the relevant evidence for judging an economic policy encompasses complex, globally interconnected phenomena, difficult for an ordinary individual to grasp. Between these extremes lies most everyday belief, and Sommer pays special attention to an important subset: perceptual beliefs. He argues that beliefs based on sensory perception (such as "there are two lines of different lengths in this drawing" before knowing it is the Müller-Lyer illusion) are supported by highly local evidence—basically, the data received through the senses [28]. Generally, our perceptual system uses multiple cues (colour, size, shape, depth, etc.) present simultaneously in the scene to form a belief about what we see. Although perception is not infallible (optical illusions and misleading contexts can deceive us), it is usually reliable, precisely because most of the relevant evidence is immediately available to the observer [29]. Thus, perceptual beliefs enjoy a quality of near-certainty and social consensus—almost everyone agrees on what they see under normal conditions—not because they are intrinsically different from other beliefs, but because the evidence supporting them is readily verifiable by anyone[30]. In contrast, many ideological beliefs (such as "anthropogenic climate change is real and catastrophic" or "economic policy X is best for the country") rely mainly on evidence that the believer has not directly accessed. This evidence is "embedded in studies most people have never read, represented in the minds of trusted authorities, or supported by consensus within a community" [31]. That is, people believe largely based on expert testimony or social diffusion of information, not because they themselves have verified the underlying data and experiments. Sommer calls this phenomenon "uncertainty absorption" (March & Simon, 1958): it occurs when conclusions are transmitted to us without the evidence that originated them, requiring us to place trust in the process of those who inferred them [32]. In the context of beliefs, this means that we often believe complex propositions because we trust academic, scientific, or media authorities who deliver the conclusions, "absorbing" all the uncertainty and details of the evidential path.

Based on these concepts, Sommer provides explanations for several phenomena: why political debates are often inconclusive, why educated people maintain "unshakeable" beliefs about complex topics, and why there is a gap between knowledge and action in certain beliefs. For example, regarding the gap between political belief and behaviour, he observes that many political beliefs rarely lead to direct actions because the link between belief and specific action is not evident. Knowing that the climate is changing does not necessarily alter someone's daily behaviour (attitude-behaviour gap), partly because this belief is supported by diffuse evidence and does not clearly indicate which individual actions would be effective [33]. Simple beliefs (such as "it will rain, better take an umbrella") lead to immediate actions precisely because of the clarity and locality of the evidence (dark clouds in the sky). A crucial point highlighted by Sommer is how the lack of locally available evidence makes believers in complex domains resistant to refutation. If someone presents us with a scientific study apparently contradicting a strongly held belief—say, an article questioning the severity of climate change—we tend not to abandon our belief immediately. This is because: (a) we may suspect the reliability of the adverse study (perhaps it has methodological flaws); and, mainly, (b) "we believe there is much other evidence in favour of our belief—even if we do not know exactly what it is" [34]. In short, we have faith that robust data exist to support our viewpoint, even if not available to us at the moment. This psychological mechanism explains why people on opposite sides of ideological debates remain convinced even after exchanging arguments: each side assumes the other ignores (or distorts) a larger body of evidence confirming their own convictions. Thus, "beliefs cannot be conclusively refuted if their believers are unaware of the very reasons (evidence) on which they are based"—individuals believe that, even without being able to rebut a specific point, the experts they trust would have answers to the challenges presented [35].

This phenomenon leads Sommer to challenge the need to postulate different internal psychological categories of belief (such as Van Leeuwen's "belief-versus-imagination"). He suggests that much of the difference in epistemic behaviour between factual and ideological beliefs is due to external factors: the quantity, quality, and location of available evidence for each type. He even asserts that the same people who are perfectly rational in simple beliefs may exhibit "invertebrate" or apparently irrational behaviour in ideological beliefs, without this implying a cognitive deficit—it simply indicates that they are reacting to the informational environment surrounding them [36]. In summary, there are not two types of mind or cognitive process, but rather different contexts in which a single mind operates according to the availability of evidence. At the end of the article, Sommer discusses the implications of his thesis for future research and, notably, for improving the quality of public beliefs. He suggests that making evidence more locally available—for example, through scientific transparency, education, and direct engagement with experimentation or data—could make complex beliefs more responsive to counter-evidence. He also warns that we should be aware of a possible cognitive bias of underestimating absent evidence: when we have only partial access to data, we may overestimate our certainty. He therefore recommends epistemic humility: recognising the limits of what we know and that our beliefs may be based on trust rather than first-hand verification[37]. In view of these contributions, it is possible

[22]*Id.* at 2.
[23]Neil Van Leeuwen, *Religious Credence Is Not Factual Belief*, *Cognition*133(1): 698–715 (2014).
[24]Joseph Sommer, supra note 2, at 3.
[25]*Id.* at 8.
[26]*Id.* at 9.
[27]*Id.* at 9.
[28]Joseph Sommer, supra note 2, at 7.
[29]*Id.* at 13.
[30]*Id.* at 12.
[31]*Id.* at 4.
[32]Joseph Sommer, supra note 2, at 15.
[33]*Id.* at 20.
[34]*Id.* at 4.
[35]*Id.* at 17.
[36]*Id.* at 5.
[37]*Id.* at 18.

to connect Sommer's ideas to the Brazilian legal and political context portrayed by Martinez and Scherch. In particular, we may ask: were the activist decisions of the STF based on "local" or "non-local" evidence? It is plausible that the Supreme Court justices, when taking exceptional measures, relied heavily on technical reports, expert opinions, and legal consensus (such as comparative law or international recommendations)—that is, evidence not immediately accessible to the ordinary citizen or the opposing political base. This hypothesis suggests that the judges themselves operated under conditions of "uncertainty absorption": they trusted the epistemic community (scientists, renowned jurists, international organisations) to validate their actions. At the same time, from the perspective of the public and other political actors, many STF decisions may have seemed lacking in visible evidence, fuelling narratives of illegitimacy or arbitrariness (those who disagree see only the conclusion, not the data or grounds considered by the STF, often confidential or technical). Thus, the interface between evidential locality and acceptance of judicial decisions becomes evident: the more the STF relies on non-local evidence (for example, confidential intelligence information when conducting inquiries), the more resistance and doubt it will face from those excluded from this information circuit—a clear parallel with Sommer's theory.

Moreover, the beliefs of the justices themselves about what is "constitutional truth" or factual in a given case may have been hardened by this locality effect. If a justice is convinced (by privileged information) that a certain politician incited attacks on institutions, no public denial by that politician will sway them, as they believe robust evidence exists in the case files (even if confidential) supporting their belief. Similarly, opponents of the STF believe the Court acts on a political agenda because they do not directly see the supposed threats justifying such drastic measures—for them, the STF is reacting to phantoms or exaggerating problems, since the convincing evidence may not be publicly accessible. Thus, a cognitive mismatch arises: the STF and its circle trust that there is a real risk (for example, a fanciful coup d'état) based on detailed reports; the opposing public, unaware of these reports, considers this concern unfounded or hysterical. This divergence feeds polarisation, precisely illustrating Sommer's model, where the lack of convergence of perceived evidence generates distinct perceptions of reality. In conclusion of this section, we establish Sommer's conceptual pillars: ideological beliefs endure because people trust in evidence not directly observed and in authorities, making them less sensitive to conventional rational arguments. This understanding will be valuable for, in the next section, critically analysing the behaviour of the Brazilian Judiciary in a post-truth context, intersecting with Jeff Friedman's ideas on naïve realism and the epistemological crisis.

Ideological Beliefs and Non-Local Evidence: Impacts on Judicial Decisions

Having outlined Sommer's theory on the influence of evidential locality on beliefs, it is possible to apply these insights to the legal field, especially to activist judicial decisions discussed in section 2. The question arises: to what extent can the STF's exceptional judicial activism be understood as the result of beliefs sustained by non-local evidence and trust in expert authorities? And what implications does this have for the legitimacy and contestability of these decisions?
Firstly, it is worth noting that in emblematic STF cases (such as ADPF 347 on the prison system, or inquiries into fake news and anti-democratic acts), the justices based their decisions on an informational framework provided by third parties. In ADPF 347, reports from the National Justice Council, prison inspections, and data from human rights organisations were submitted—a myriad of technical evidence indicating serious and widespread violations of rights in prisons. These are evidences that go beyond the empirical experience of most justices (for example, they themselves did not witness the conditions of all prisons), but which, presented in the case files, formed a convincing mosaic in their eyes.
In these examples, it is clear that the judges absorbed uncertainty through trust in specialised or investigative sources. In Sommer's terms, they formed beliefs (e.g., "there is a criminal fake news scheme underway" or "the prison system is in unconstitutional collapse") based mainly on non-local evidence—reports, dossiers, investigations—evidence that is not immediately transparent or reprocessable by the general public. This dynamic has two main consequences:

Resistance to external refutation: Just as a layperson resists changing their opinion on climate change because they trust the large volume of underlying scientific data, the STF resists contrary political pressures because it believes it possesses a solid set of legitimising evidence. For example, when government sectors challenged the Fake News Inquiry, accusing it of political persecution, the justices remained firm, possibly because they were aware of specific investigative elements that supported its continuation. Here echoes Sommer's observation that "beliefs cannot be conclusively refuted if believers are unaware (or, in this case, do not reveal) their own reasons" [38]. Critics of the STF were unaware of the detailed reasons (confidential evidence) for which the Court acted; the justices, confident in these reasons, perceived the criticisms as unfounded or ignorant. Thus, an epistemic imbalance was created: the STF held supposed privileged information and, therefore, privileged conviction; its detractors, without access to it, did not share the conviction and interpreted the conduct through the lens of political suspicion.

Truncated communication and perception of arbitrariness: From the perspective of the average citizen or opposition politicians, the basis for STF decisions may seem obscure or "mysterious", leading them to formulate alternative narratives to explain such decisions. Here enters the notion of post-truth, in which objective facts have less impact on public opinion than appeals to pre-existing beliefs and emotions [39]. If the concrete evidence considered by the STF is not publicly tangible, the space is occupied by interpretations guided by confirmation bias—those who already distrust the Judiciary see its actions as authoritarian excesses (fueling conspiracy beliefs that "there is a judicial plot against the people"), while those who trust the STF accept its decisions almost as a technocratic article of faith ("the justices know what they are doing, they have information we do not have"). This phenomenon precisely reflects what Sommer describes: in domains of non-local evidence, people tend to "believe there is other evidence they do not have available" and thus maintain their belief—in this case, both supporters and detractors of the STF assume that there are hidden justifications supporting their positions, rather than being convinced by visible facts (which are scarce or ambiguous).

From this analysis, two central implications for law arise: the first is that judicial legitimation in contentious contexts requires greater effort to publicise evidence. In line with Sommer, the more relevant evidence is made local (for example, decisions filled with verifiable facts, transparent disclosure of sensitive information when possible), the more people can converge in belief about the correctness (or not) of the decision. Otherwise, legitimacy remains confined to a circle of initiates and does not penetrate the public sphere, stimulating narrative conflicts. The STF, at times, seems to have realised this—for example, by holding public hearings (as in actions on COVID-19 measures, hearing experts and disclosing data), it tried to "localise" more evidence, that is, bring technical information to open debate. In situations such as the controversial Inquiry 4781, criticism focused precisely on the lack of transparency and broad adversarial process, which fueled theories of abuse of power.

The second implication is the need for epistemological humility on the part of judges. Just as Sommer suggests that individuals recognise when their beliefs are based on trust and not direct knowledge, judges could calibrate their exceptional decisions with clear awareness of their precarious democratic foundations. This might mean endowing their decisions with self-restraint clauses or provisions for periodic review—for example, the STF declaring a state of unconstitutional affairs subject to semiannual joint reassessment with the other

[38] *Id.* at 17.
[39] *Id.* at 2.

branches, rather than decreeing it sine die and closing the discussion. Such a posture would show recognition that an anomalous path is being taken and that it should last only as long as absolutely necessary and evidenced. In short, it would mean treating the activist decision itself as provisional and fallible, open to adjustment if future facts so demand. In Sommer's jargon, judges should avoid the bias of overconfidence in evidence not fully auditable by third parties. A concrete example illustrating this tension was the STF's decision on the criminalisation of homophobia [40]. The Court, faced with legislative delay in equating homophobia with racism, interpreted existing legislation progressively to fill the gap. This was activism motivated by the protection of minorities, clearly aligned with constitutional values of equality. However, critics argued that the STF exceeded its functions, "legislating" without broad social debate, and did not sufficiently consider possible collateral impacts of the equation. Through Sommer's lens, the justices held strong convictions (based on data on violence against LGBTQIA+ people and opinions from jurists and pro-criminalisation organisations) and acted according to those beliefs. For the progressive legal community, the favourable evidence and arguments were manifest; for conservative sectors, possible counter-evidence (e.g., risks to religious freedom or doubts about penal effectiveness) were disregarded. Again, each side trusts different authorities and sources: NGOs and human rights studies on one side, religious leaders and traditionalist jurists on the other. Thus, the decision—although legally robust—fell into the interpretive bubble of each group, finding little persuasive capacity beyond its circles. In conclusion, it is clear that the Judiciary, when deciding highly politicised or innovative issues, is inserted into the same cognitive framework as a polarised society: its decisions are made by human beings who, even invested with a professional habitus of legal rationality, are nonetheless influenced by the regime of evidence to which they have access. When this regime is asymmetrically distributed (the STF has certain evidence and information, the public does not), fertile ground is created for misunderstanding and contestation. On the other hand, supreme courts also influence collective beliefs when they issue symbolic decisions, sometimes shifting the Overton window. This leads us, ahead, to combine with Friedman's analysis, which directly addresses the ideological and epistemological dimension of divergent perceptions of reality between left and right.

Post-Truth and the Epistemological Crisis: Between Facts, Narratives, and Beliefs: In the article "Post-Truth and the Epistemological Crisis", political scientist Jeffrey Friedman diagnoses current political polarisation as, fundamentally, an epistemological crisis. Friedman argues that notions of "post-truth"—often associated with the idea that segments of the population have come to deny the existence of objective facts or truth—must be understood in terms of certain naïve epistemic assumptions shared by both the right and the left [41]. Essentially, he proposes that the intensification of political disputes stems from both sides failing to recognise the fallible and interpretative nature of their own knowledge, treating their opinions as self-evident truths and opposing opinions as products of bad faith or deliberate ignorance [42]. Friedman begins by differentiating two forms of naïve realism. First-person naïve realism is the tendency to think "I see things as they really are"—that is, to believe one's own convictions derive from a direct, unmediated perception of reality [43]. Third-person naïve realism, in turn, is the assumption that other people (typically, authorities) access reality just as directly and reliably [44]. He then links each type to a political spectrum: "those on the right tend to be first-person naïve realists, treating economic and social realities as accessible to the common citizen through simple common sense; while those on the left tend to be third-person naïve realists, treating credentialed experts as forming a consensus—a new form of common sense" [45]. In other words, broadly speaking, conservatives trust their direct experience and the "evident truths" of everyday life, while progressives trust the consensus of experts (scientists, academics) as a faithful reflection of reality. This difference generates distinct approaches to disagreement. For the typical conservative (imagine an average right-wing citizen in the US or Brazil), their opinions on economics or social traditions seem so obviously correct—derived from practice and common sense—that if someone disagrees, it can only be due to stubborn ignorance or bad faith. Friedman cites Ross and Ward (1996) to recall that people tend to think those who disagree are either misinformed or driven by bias and ulterior motives [46]. For the typical leftist, who trusts science and academic institutions, if someone denies, for example, climate change or vaccine efficacy, it can only mean that person is "ignoring the truth" or "spreading disinformation" deliberately [47]. In both cases, Friedman notes that it is assumed that truth is transparent, whether to oneself (via common sense) or to the technical community (via scientific consensus). Therefore, if there is disagreement, it cannot be genuine or rational: it must arise from moral or cognitive defect on the other side [48].

This condition leads to the current phenomenon of each political faction accusing the other of lying, being intellectually dishonest, or "blind" due to fanaticism. Friedman's point is that, ironically, both right and left fall into the same epistemological error: both "fail to understand themselves and their adversaries as issuers of fallible knowledge claims" [49]. That is, neither side recognises that its own beliefs result from interpretative processes that may contain errors; instead, each sees itself as infallibly correct. This constitutes the epistemological crisis: a collective inability to deal constructively with disagreement, by presuming that truth (accessible either to the senses or to expert knowledge) is on one's side, making dialogue superfluous. Friedman also traces a historical context for this epistemic polarisation. He mentions that after World War II there was a period of liberal consensus in the US, in which major media networks and most experts sustained a relatively homogeneous worldview (the so-called "Cold War liberal consensus"). In this era, disagreements were marginalised: patriots and conservatives were sidelined. The "truth" conveyed was essentially the moderate liberal-progressive truth, with broad social credit [50]. Over time, anti-system right-wing groups (for example, personified by William F. Buckley and later by the religious and populist right) began to contest this monopoly of truth in institutions, accusing the mainstream media and academia of liberal bias. This criticism gained traction especially from the 1980s, when alternative conservative media emerged (talk radio like Rush Limbaugh, Fox News, etc.), allowing the right to have its own constructed reality [51]. Thus, if there was previously an almost unquestioned official truth (given by the third-person consensus of liberal experts), in recent years a conservative "epistemic bubble" has emerged that rebuts this truth point by point, erecting counter-narratives. Friedman maintains that the current impasse—of "post-truth"—is not so much a cynical rejection of the idea of truth by one side (as some authors accuse, especially blaming the populist right), but rather a clash between two naïve realisms. The populist right sincerely believes in things that the technocratic left finds absurd, and vice versa, because each shares sources of evidence and interpretative premises that are irreconcilable. An example Friedman explores is the divergence over the COVID-19 pandemic: many conservatives saw as "common sense" the notion that lockdowns were excessive or that the economy could not stop because of a virus, while liberals relied entirely on scientific recommendations for isolation and vaccination [52]. Each side saw the other as acting in bad faith or irrationally—

[40] Supremo Tribunal Federal, ADO 26/DF, *Partido Popular Socialista v. Congresso Nacional*, ECLI: urn:lex:br:supremo.tribunal.federal;plenario:acordao;ado:2019-06-13;26, (13 June 2019), voto do Min. Celso de Mello, Tribunal Pleno, p. 1–60, https://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/tesesADO26.pdf.

[41] Jeffrey Friedman, supra note 3, at 2.

[42] *Id.* at 3.

[43] *Id.* at 3.

[44] *Id.* at 4.

[45] Jeffrey Friedman, supra note 3, at 2.

[46] *Id.* at 3.

[47] *Id.* at 3.

[48] *Id.* at 2.

[49] Jeffrey Friedman, supra note 3, at 3.

[50] *Id.* at 8.

[51] *Id.* at 10.

[52] *Id.* at 2.

conservatives accusing the media and authorities of exaggeration or ulterior motives of social control, and liberals accusing "deniers" of perversity or complete ignorance. In both, there was a refusal to admit that the other might be interpreting the situation according to its own logic, even if erroneous—there was even a denial of the assumption of cognitive good faith of the opponent. A concept implicated in Friedman's text is motivated reasoning. He observes that each side attributes the other's error to motivational biases (interests, passions, "stubbornness"), rarely admitting that perhaps the other side simply has a different set of information and assumptions[53]. Indeed, Friedman states that the epistemic crisis arises from the refusal to see disagreement as an epistemic problem in which each may have different interpretations of reality, preferring to reduce it to a moral or psychological problem of the adversary. This mentality prevents genuine deliberation: if I believe my opponent knows the truth but distorts it out of malice, there is no reason to debate—I must simply defeat or delegitimise him.

Regarding knowledge institutions, Friedman observes that the left, by trusting the academic-media circuit, tends to see science and traditional journalism as spokespersons for truth. This led to the constant appeal to "trust the experts", "follow the science", and to condemn news not aligned with major newspapers as fake news. There was, in a way, the sacralisation of expert consensus as the final criterion of truth [54]. Meanwhile, the right developed a meta-narrative alleging that experts and mainstream media are not trustworthy, as they are supposedly colluding in an ideological agenda (systemic liberal bias). This justifies ignoring even robust evidence: any data unfavourable to conservative beliefs could be dismissed as "fabricated" by the globalist/leftist establishment. Friedman frames this as the right replacing blind trust in authority with blind trust in "common sense" (or in the populist leader who embodies it). In the final part of the article, Friedman acknowledges that there is no easy solution to this crisis. He questions simplistic proposals to "return to consensus" via censorship of disinformation or reinforcement of fact authorities, arguing that this ignores the roots of the problem—mutual distrust and lack of cognitive humility on both sides [55]. Friedman suggests that, ideally, all actors should adopt an epistemic posture of recognising fallibilism: admitting that what they consider evident may not be so for others, and that their own convictions may be subject to error [56]. This would open space for genuine dialogue and negotiation of understandings. But he also expresses scepticism that such a change in attitude will occur widely, given the intensification of the cycle of polarisation and identity self-reinforcement. Practically, the article advocates at least for empathetic understanding of the adversary. That is, even totally disagreeing, trying to understand why that person believes what they do (what experiences, narratives, and information led them to adopt that position)—and not automatically presuming bad intention or stupidity. This interpretative effort would be the beginning of rebuilding some trust and a common factual basis on which to argue [57]. Without this, the tendency is progressive radicalisation: if I treat the other as dishonest, he will confirm my expectations by acting confrontationally, and vice versa. With Friedman's ideas thus presented, they can be applied to the recent Brazilian scenario: episodes such as disputes over the integrity of electronic voting machines, pandemic management, or social policy can be read through his lens. For example, the post-election situation in 2022 (with alleged fraud) illustrates the unshakeable belief of one group that "it is obvious" there was fraud (adjusting any evidence to conspiratorial axioms), while the other group saw this belief as pure coup-mongering bad faith. Result: no dialogue, only confrontation. The Judiciary, in the midst of this, reacted by punishing "liars" without realising it could itself be the "manipulator of truth". This tug-of-war without mediation demonstrates the epistemic crisis at the heart of the legal-political debate itself: which version of the facts prevails? In theory, courts should appropriately arbitrate factual disputes, but if a significant portion of the population a priori distrusts the arbiter, the decision does not pacify—it becomes ammunition for the narrative war. This anticipates the final critical analysis: how the Judiciary, within this climate of post-truth and naïve realisms, ends up leaning to one side (the technocratic-progressive) and is perceived by the other side (pragmatic-conservative) as captured—and how this epistemic rigidity can be broken or mitigated.

Naïve Realism and Ideological Bias: The Judicial Construction of Reality: Building on Friedman's synthesis of post-truth crisis, we return to the role of the Judiciary—especially constitutional courts—to analyse how these epistemological dynamics are present and their consequences within Justice. As previously mentioned, the STF acted driven by the conviction of defending the Constitution and democracy, which objectively aligned it with the premises and agendas of the liberal left (human rights, secularism, science, free press). From Friedman's perspective, this conduct can be seen as a reflection of third-person naïve realism: judges, sharing the dominant legal and academic culture, tend to treat expert consensus as incontestable truths, incorporating them into their decisions [58]. Thus, dominant positions in the scientific or legal community—for example, "extreme austerity policies harm the poor", or "greater circulation of firearms increases violence", or "hate speech against minorities violates human dignity"—are taken, in progressive forensic discourse, almost as new self-evident facts, comparable to axioms of Enlightenment common sense. In this way, ideologically charged judicial decisions may be sincerely justified by judges not in political-partisan terms, but as logical applications of proven knowledge. For example, when the STF compelled the Executive to develop plans to contain deforestation in the Amazon [59], it did so based on scientific data about climate change and the virtually consensual idea among experts that deforestation causes severe environmental damage. By requiring compliance with environmental treaties and demanding active public policies, the Court believed it was merely demanding the obvious—what science indicates as necessary. However, from the perspective of ruralist sectors and defenders of economic sovereignty, this intervention was interpreted as "green-leftist" activism, overriding legitimate agrarian policy choices and ignoring counter-narratives (e.g., the argument that economic development justifies tolerating some level of deforestation). Here, the clash of naïve realisms is evident: the STF relied on third-person naïve realism (environmentalist scientific consensus), while its critics relied on first-person realism (local common sense that "using the land brings wealth; the Amazon is large enough"). Each side attributed pejoratives to the other ("irresponsible ecocides" vs. "anti-sovereignty technocrats"), mirroring Friedman's described phenomenon [60]. The leftward bias in STF decisions may not mean that justices acted as partisan militants, but rather that they operated within a cognitive matrix attuned to the liberal-Enlightenment worldview. This matrix is fed by knowledge institutions (universities, NGOs, professional press), which—due to a self-selective filter—are mostly composed of people with progressive orientation. Thus, when the epistemic community speaks, it rarely questions premises dear to the left; on the contrary, it tends to reinforce them. The Judiciary, by uncritically adopting these premises as scientific truths, ends up absorbing their undeclared biases as well.
A paradigmatic example is found in the jurisprudential evolution regarding the rights of trans people and gender identity. In recent years, both Brazilian and international courts have recognised the right to change name and gender in documents without requiring surgery, based on contemporary medical-psychological opinions affirming that gender is largely a construction and personal self-determination, and that civil registry changes should not be

[53] *Id.* at 3.
[54] Jeffrey Friedman, supra note 3, at 2.
[55] *Id.* at 18.
[56] *Id.* at 3.
[57] *Id.* at 3.

[58] *Id.* at 2.
[59] Supremo Tribunal Federal (Braz.), ADPF 760/DF, *Partido Socialista Brasileiro (PSB) et al. v. União*, ECLI: urn:lex:br:supremo.tribunal.federal;plenario:acordao;adpf:2024-03-14;760, (Mar. 14, 2024), voto da Min. Cármen Lúcia, Tribunal Pleno, p. 1–85, https://stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/Informac807a771oa768sociedadeADPF760Final.pdf..
[60] STF, ADPF 760/DF, at 3.

conditioned on invasive interventions. This view aligns with the progressive agenda of recognising trans identities and, in fact, constitutes today's consensus among health, psychology, and human rights experts. The STF, in ADI 4275 (2018), adopted exactly this position, allowing the change of first name and gender in civil registry for trans people even without surgery, grounding its decision in principles of human dignity and current studies. Here we see the Court functioning as spokesperson for the prevailing technical-scientific and humanist consensus—a clear case of third-person naïve realism, assuming this consensus is the correct and only basis for decision [61]. At the same time, traditional or religious segments reject this consensus, relying on biological or theological conceptions of sex and gender (first-person realism, invoking the intuitive argument that "it's obvious that a man is a man, a woman is a woman"). The result is that this decision—celebrated in the progressive legal context—did not convince the pragmatic and conservative legal context, which accused it of subverting biological truth and natural order. Friedman's framework is observed: each side is certain of being anchored in the true understanding of reality, and both are unable to persuade each other. An important aspect is Friedman's observation that the technocratic left, by treating its knowledge as evident, tends to support measures to silence dissenting voices, considering them purposefully false or harmful [62]. In Brazil, this was partly reflected in STF and TSE actions against so-called fake news and hate speech. Under the latent justification of protecting the integrity of public debate, there were orders to remove content from social networks and punish parliamentarians for anti-democratic statements. However, this practice met criticism as censorship and restriction of freedom of expression, especially among conservative groups. This clash can be interpreted as follows: the STF and the establishment understood that certain ideas should not circulate because they are factually or ethically false (true "dangerous post-truths"); those affected claimed political persecution and suppression of legitimate voices. In this clash, again, both sides accuse each other of violating truth or morality: the STF and its defenders accuse others of spreading deliberate lies, and others accuse the STF of suppressing "truth" from their point of view. The order to remove content from social networks without prior adversarial process reinforces the feeling of being right—"if they are censoring me, it's because I revealed something uncomfortable". That is, the Judiciary's well-intentioned action may paradoxically have solidified the belief it intended to combat—precisely the backfire effect pointed out in studies on correction of misinformation (although Friedman notes that the strict backfire effect is rare, he recognises that hostility and persecution can reinforce group cohesion among opponents).

A final point to highlight is the potential "epistemic closure" within the Judiciary itself. Judges, especially in higher courts, are often people from the same cultural elite, rarely exposed to experiences that contradict their worldview. Without internal diversity, a collegiate tends toward groupthink. Thus, the STF is dominated by justices with robust academic backgrounds and cosmopolitan profiles—there is not, for example, an evangelical pastor or agrarian leader among them who could bring a culturally distinct perspective. This means that certain views of popular conservatism are not represented in deliberation. Even if, normatively, we do not wish for judges who deny rights or scientific facts, it is a fact that lack of counterpoint can lead to overconfidence. An ideologically homogeneous court risks ignoring pertinent minority arguments by considering them obvious errors a priori. Thus, the feeling grows among conservatives of being "persecuted by a fully rigged system". This sentiment, real or not, has concrete effects: it increases radicalisation and the willingness to resort to extralegal measures (popular uprisings, attacks on public buildings, land invasions, etc.). It is evident that excluding the perceptions of a significant segment of the people from institutional discourse fuels anti-democratic outcomes—a sad irony, since the STF precisely fights to preserve democracy. What paths emerge from this analysis? In line with Friedman, the Judiciary should cultivate (itself and in society) some epistemological humility. Justices could, for example, modulate their decisions to recognise the legitimate concerns of the other side, even when overruling them. This can be done through obiter dicta or balanced reasoning: in a decision favouring collective health policies (e.g., vaccine mandates), the Court can at the same time urge the State to respect plurality and transparency, "recognising the freedom of criticism, but emphasising the weight of scientific evidence". These are small rhetorical concessions that show the opposing public that their views were not summarily dismissed without consideration, but rather weighed and overcome for explicit reasons. Another strategy would be for the STF to promote more inclusive institutional dialogues, such as broad public hearings before ruling on complex moral or technical-scientific issues, hearing divergent voices (even conservative ones). This does not mean the Court will agree with them, but it gives groups a sense of participation and consideration. At minimum, it mitigates the perception of disregard and illegitimacy. In summary, Friedman warns that the illusory belief in holding a monopoly on truth is shared by different camps and is a source of endless conflict. Applied to the Judiciary, this suggests that courts must avoid becoming monoliths of official truth, under penalty of alienating a significant portion of the population and provoking equally absolutist reactions. In the Brazilian context, in fact, the STF has been elevated by the left to the role of Enlightenment saviour (hence applause when it censors fake news and imprisons extremists), while the right paints it as an Enlightenment tyrant. Both narratives converge in attributing infallibility—positive or negative—to the Court, which is dangerous for democracy. The ideal would be to restore judicial decisions to their proper place: human acts, fallible, subject to rational critical debate. For this, as Friedman highlights, it is necessary to recover the ability to debate on the basis of mutual recognition—not treating the other as a heretic or enemy, but as someone possibly mistaken (or possibly correct in something we have not seen). If the STF and other actors can foster this attitude, it may be possible to escape the post-truth trap and move toward an environment where facts and evidence—with their recognised uncertainties—again constitute common ground for argumentation.

STF and Post-Truth: Concise Analysis of Representative Cases: To concretely illustrate the dynamics discussed throughout the article, four paradigmatic decisions of the Brazilian Supreme Federal Court (STF) are examined in relation to the concepts of post-truth, legal blindness, and non-local evidence: (a) the recognition of the "state of unconstitutional affairs" in the prison system [63]; (b) judicial action during the COVID-19 pandemic (2020–2021); (c) the criminalisation of homophobia [64]; and (d) interpretation regarding traditionally occupied indigenous lands [65]. In each case, institutional activism and epistemic beliefs converge with the theoretical phenomena addressed, while also evidencing tensions between legal decision, politics, and truth. In the case of the prison system, ADPF 347/DF was filed in 2015 to challenge the degrading conditions of Brazilian prisons. In this action, the STF declared, for the first time, the existence of a "state of unconstitutional affairs" in Brazil, explicitly importing from Colombian jurisprudence this legal concept that allows the Judiciary to act supra petita—that is, beyond the traditional limits of jurisdiction—to remedy persistent omissions by the Executive and Legislative branches. The Court ordered a series of structural and coordinated measures to mitigate serious violations of fundamental rights in prisons, thus exceeding ordinary judicial action. In his

[61] *Id.* at 4.

[62] Jeffrey Friedman, supra note 3, at 7.

[63] Supremo Tribunal Federal, ADPF 347/DF, *Partido Socialismo e Liberdade (PSOL) v. União e outros*, ECLI: urn:lex:br:supremo.tribunal.federal;plenario:acordao;adpf:2015-09-09;347, (09 Sept. 2015), voto do Min. Marco Aurélio, Tribunal Pleno, p. 1–45,https://www.stf.jus.br/arquivo/cms/publicacaoBOInternet/anexo/link_download/casos_relevantes/pt/ADPF_347.pdf.

[64] STF, supra note 40, ADO 26/DF.

[65] Supremo Tribunal Federal, RE 1017365/SC, *FUNAI v. Instituto do Meio Ambiente de SC*, ECLI: urn:lex:br:supremo.tribunal.federal;plenario:acordao;re:2023-09-27;1017365, (27 Sept. 2023), voto do Min. Edson Fachin, Tribunal Pleno, p. 1–80, https://www.stf.jus.br/arquivo/cms/publicacaoBOInternet/anexo/link_download/casos_relevantes/pt/RE_1017365.pdf.

opinion, Justice Marco Aurélio candidly recognised the difficulty of reconciling punitive public opinion with the demands of justice and the counter-majoritarian function of the STF: "popular rejection means that the matter of improving the prison system faces [...] what political scientists call a 'legislative blind spot' [...] The majoritarian powers rely on the counter-majoritarian profile of constitutional courts". In other words, unpopular issues such as the defence of prisoners' rights become a legislative blind spot: elected representatives avoid addressing them for fear of political costs, leaving a gap for judicial intervention. This directly illustrates the situation described by Martinez and Scherch: the guardian of the Constitution placing itself outside strict legality (acting supra petita) to ensure the material effectiveness of rights, constituting a paradox of possible "legal blindness" (acting at the margins of the Constitution to enforce it). At the same time, this case evidences the phenomenon of non-local evidence and its effects: the STF's decision was based on technical reports and prison inspections—broadly consensual among experts regarding the system's collapse—but such evidence is scarcely accessible or palatable to the general public, which tends to adhere to the intuitive belief that prisons do not deserve attention. Thus, civil society largely does not follow the data underlying the decision and remains resistant to it, reinforcing the counter-majoritarian character of the measure. From Friedman's perspective, there is also a clash of naïve realisms: on one side, jurists and human rights activists (many aligned with the left) saw the STF's intervention in prisons as obviously necessary and correct, while a conservative segment of the population interpreted it as "coddling criminals", attributing to the STF an ideological pro-criminal bias (a view reinforced by general distrust of the Court). Each group filters facts according to prior convictions—one side trusting the experts' diagnosis of the prison system, the other trusting punitive common sense—a typical post-truth scenario, in which dialogue becomes difficult.

During the COVID-19 pandemic, especially in 2020, the STF adopted several impactful decisions exemplifying the dilemma between technical evidence and social acceptance. In a context of global health crisis, the Court affirmed the concurrent competence of states and municipalities to determine autonomous health measures [66] and imposed obligations on the Federal Government—such as contingency planning and data transparency—based on recommendations from the World Health Organization (WHO) and international scientific studies on virus control. These decisions were fundamental for enabling local quarantines and science-informed public policies, but also reinforced a perception of institutional dogmatism by the STF, at least among its critics. The evidence invoked—epidemiological statistics, mathematical contagion models, medical opinions—was often dispersed and difficult for laypeople to access, making effective adversarial debate challenging. This is the phenomenon of "evidential locality" highlighted by Sommer: the justices relied heavily on global scientific information and consensus (non-local evidence), which ordinary citizens could only assess indirectly. As a result, judicial decisions became targets of opposing political narratives: on one side, they were applauded by those who trusted health authorities (third-person naïve realism); on the other, they were labelled "tyrannical" by those who distrusted sanitary measures and gave greater weight to economic or libertarian intuition (first-person naïve realism). A notable example was the controversy over lockdowns and restrictions: the STF never imposed a "national lockdown", but by ensuring the autonomy of subnational entities to adopt such measures, and by suspending federal decrees contrary to scientific guidelines, it was seen by opponents of these policies as co-responsible for them. The consequence was a myriad of attacks on the Judiciary on social media, accusing it of collusion with international health authorities to suppress freedoms. In short, in managing the pandemic, the STF found itself at the centre of an epistemological storm: by applying what it considered incontestable scientific truths (vaccines, isolation, mask use, etc.), it was acclaimed by those who shared this technical framework, but equally demonised by those who adhered to alternative theories. This experience reinforces the need for transparency and didacticism in judicial reasoning: it is noted that when the STF held public hearings and actively disclosed the opinions considered (e.g., in rulings on mandatory vaccination and oxygen distribution to hospitals), it managed to mitigate criticism somewhat, while decisions perceived as obscure inflamed suspicions. The 2019 decision on the criminalisation of homophobia (ADO 26 and MI 4733) offers another eloquent example. By majority, the STF recognised the unconstitutional omission of Congress in legislating on homophobia and transphobia crimes, and equated such conduct with the crime of racism already provided for by law (Law No. 7.716/1989). To support this interpretative leap, the justices extensively cited data on violence against the LGBTQIA+ community, sociological studies on discrimination, opinions from international bodies (such as decisions of the European Court of Human Rights), and reports from human rights NGOs. In other words, they relied on a corpus of technical-scientific evidence and global moral consensus pointing to the need for criminal protection of this minority. In the opinion of the rapporteur, Justice Celso de Mello, this body of evidence was presented as incontestable in light of the constitutional mandate to protect human dignity. The decision, however, did not escape criticism: many jurists and parliamentarians—even some aligned with the equality agenda—questioned whether there had been an overreach, with the STF legislating positively, and pointed to the absence of legislative debate weighing diverse consequences (e.g., possible conflicts with guarantees of religious freedom and expression).

From the theoretical perspective adopted here, it can be said that the STF incurred a kind of "benign legal blindness": convinced of holding the legal and moral truth on the subject (that homophobia is equivalent to racism and must be urgently criminalised), the Court treated the technical consensus it embraced as if it were absolute hermeneutic truth, leaving no room for pluralism of views. In Sommer's terms, the justices acted almost exclusively on non-local evidence—research, statistics, expert opinions—without giving weight to contrary intuitions or diffuse societal perceptions about how discrimination should be combated. This made the decision resistant to rational questioning: in the face of criticism, the recurring response is that "science" and "universal human rights" support the decision, closing the door to critical review (since dissenters would then be in favour of homophobia or against science). Here is a clear manifestation of third-person naïve realism, as outlined by Friedman: the STF assumed that the enlightened community (jurists, social scientists, international bodies) had already formed the correct consensus—analogous to a "new Enlightenment common sense"—and that it was its role to implement it. By doing so, it inevitably alienated those operating under a different framework, whether for religious convictions or strict legal philosophy (first-person realism). For these, the STF's decision seemed arbitrary and ideological, an "activist stroke of the pen" that enshrined the progressive worldview without debate. Ultimately, even if many consider the decision just and aligned with civilisational values, it exemplifies the risks of transforming technical and moral convictions into incontestable legal truths: the opportunity for broad social dialogue is lost, dissenters are immediately labelled as ignorant or malicious, and jurisprudence is crystallised whose questioning becomes anathema. From Martinez and Scherch's perspective, there is also the danger of normalising exception: today the STF, for good reasons, "legislates" against homophobia; tomorrow, a properly instrumentalised court could invoke a similar method to impose something controversial, shielding itself with apparent technical or moral consensus and overriding democratic debate.

Finally, the recent ruling on the demarcation of indigenous lands (RE 1017365/SC, Theme 1031 of General Repercussion) illustrates the continuity and complexity of these trends. In 2023, the STF concluded the judgment of this appeal and established a binding thesis rejecting the so-called "time frame thesis"—according to which

[66]Supremo Tribunal Federal, ADI 6341/DF, *Partido Democrático Trabalhista (PDT) v. Presidente da República*, ECLI: urn:lex:br:supremo.tribunal.federal;plenario:acordao;adi:2020-04-15;6341, (15 Apr. 2020), voto do Min. Marco Aurélio, Tribunal Pleno, p. 1–35, https://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/ADI6341.pdf.

only indigenous peoples present on the land at the time of the 1988 Constitution would have rights to it. The decision expanded the concept of "traditionally occupied land" beyond the time frame, contrary to the expectations of many legislators and economic groups (especially agribusiness), and was mainly based on anthropological reports, historical studies, and references to international norms protecting indigenous peoples. The Court, led by rapporteur Justice Edson Fachin, interpreted Article 231 of the 1988 Constitution to emphasise the original and imprescriptible character of indigenous rights, highlighting that many communities were expelled from their lands before 1988 and, therefore, could not be required to be physically present on that date. Technically, a decision protective of minority ethnic rights was made. However, from a formal perspective, several critics argue that the STF exceeded the constitutional text and deliberately ignored legislative debate—precisely in 2023, the Chamber of Deputies approved a bill establishing the time frame, in a movement opposite to the Court. Martinez and Scherch's analysis warns of the risk of normalising exception: the STF, by reiterating its role as ultimate solver of highly political issues, may be definitively incorporating this "extravagant" function of positive legislator in sensitive matters, inaugurating new nuances of a judicial State of Exception.

The decision on indigenous lands, supported by technical opinions and what many consider a moral imperative of historical justice, was celebrated by some, but interpreted by others as an authoritarian and messianic act of the Court—the latter arguing that legal certainty was undermined and that the STF was led by "moral blindness", validating an ideological agenda under the mantle of epistemic authority. Again, the post-truth pattern is observed: supporters of the decision believe there are unquestionable socio-environmental and legal-social evidences supporting it (including the ministers' devotion to the anthropological studies presented, considered specialised knowledge above dispute), while opponents spread the idea that the STF "ignores reality" and acts politically—some even alleging that the justices serve foreign interests against national sovereignty. The polarisation is such that constructive dialogue on balancing indigenous rights and rural landowners' rights becomes difficult: upon winning in court, one side feels there is nothing left to discuss; upon losing, the other radicalises and advocates disobedience or constitutional change. What is certain is that the STF's conduct was guided, as in previous cases, by a strong conviction of being on the right side of History, which gives great transformative energy to the decision, but demands vigilance regarding its side effects. After all, from the moment any relevant political conflict can be converted into a technical-legal issue to be decided by experts (judges advised by specialists), space is opened for the emptying of the traditional democratic arena. This phenomenon was well captured by Friedman in noting that liberals tend to see experts as oracles of a new common evidence—in this case, the "anthropological truth" about indigenous lands would pre-exist politics—while adversaries, not sharing this belief, see the decision as abuse. Here, both third-person naïve realism (in the STF) and first-person realism (in critics) prevent mutual recognition: neither grants the other the possibility of having a valid understanding of the world.

In summary, these four examples demonstrate that institutional activism by the STF, even when motivated by the protection of rights and the realisation of constitutional values, often relies on epistemic beliefs (whether technical or ideological) that generate sharp divisions. The cases illustrate how non-local evidence underpins transformative decisions—yet ones that are difficult for the public to digest—and how naïve realism influences both sides of the discussion: the STF and its supporters see their premises (fundamental rights, scientific consensus) as clear truths, while opponents see them as questionable constructions. This disconnect reinforces the post-truth atmosphere surrounding the Judiciary. At the same time, the examples highlight the validity of Martinez and Scherch's concerns regarding the need for the STF to reflect on the limits of its exceptional action, under penalty of institutionalising solutions at the margins of the classical democratic model and, paradoxically, providing ammunition for the very authoritarian projects it seeks to combat. [67]

FINAL CONSIDERATIONS

This article sought to analyse, from an interdisciplinary perspective, the role of the Brazilian Judiciary in a context of heightened ideological polarisation and epistemic crisis of trust, using as theoretical lens the concepts developed in three texts from different fields (Constitutional Law, Cognitive Psychology, and Political Theory). Starting from the case of the STF—which in recent years has adopted an activist stance to contain institutional threats—a legal paradox was identified: in its mission to protect the Constitution, the Court acted at the margins of the constitutional design, configuring a sui generis state of exception . This paradox unfolded into an apparent contradiction: in combating supposed enemies of democratic order, the Judiciary assumed counter-majoritarian traits and strongly aligned itself with a left-wing bias against a democratically elected right-wing government, generating distrust and rejection among conservative and legalist sectors of the political spectrum. Based on Sommer's theory, it was argued that this dynamic is exacerbated by the asymmetry in the availability of evidence between the Judiciary and the opposing public. The STF made decisions supported by extensive evidence, but not directly accessible to society—which helped to solidify internally the conviction of the correctness of its actions, but did not persuade the sceptical strata, who did not share the same informational basis. By analogy with Sommer's idea of "uncertainty absorption", the justices placed trust in technical reports and scientific consensus to guide their legal beliefs, while much of the population saw only the conclusions issued without "seeing" the evidence, fuelling narratives of arbitrariness . Thus, activist judicial decisions tend to be difficult to refute or even debate for those outside the evidentiary circuit that underpins them, leading critics to deny them not by the facts, but by attributing ideological motivation.

This scenario fits into the post-truth crisis described by Friedman, in which both right and left assume dogmatic epistemic postures—the right trusting in the supposed "self-evident obviousness" of its common sense, and the left in the "technical obviousness" of expert consensus. It was observed that the STF adhered to the latter approach, mirroring third-person naïve realism: it treated technical-scientific consensus (in health, environment, human rights, social relations) as new self-evidences, incorporating them into decisions as if they were above rational contestation. Consequently, for groups that do not share the same authority framework, the Judiciary came to be seen as a politically partial actor that "forces down" the truths of the progressive bubble. Thus, the figure of the impartial judge is delegitimised in the perception of these groups—they begin to see it as an adversary, not as a reliable arbiter. The conjunction of these phenomena—procedural exceptionality, substantive bias, and epistemic isolation—produced a dangerous impasse. On one hand, the STF considers that it acted justly within its role as guardian of the Constitution, preventing a greater evil (the collapse of democratic legality). On the other, a significant portion of society believes the STF has become an autocratic entity, violating rules and persecuting certain segments (e.g., conservative patriots) for political reasons. In this clash of narratives, each side sees itself as the defender of "truth"—whether democratic truth or popular truth—and accuses the other of "lying" or "coup". This is precisely the portrait of post-truth polarisation: "each side tends to treat disagreement as a problem of bad faith, rather than a problem of knowledge" . Thus, judicial conflicts are transmuted into identity conflicts, in which the legal defeat of a group is seen not as legitimate application of the law, but as annihilation of a worldview. In light of this, the importance of fostering epistemological humility and dialogue in institutional practices is reiterated. The Judiciary, although it must be guided by facts and norms (and not by majoritarian pressures), cannot ignore that the democratic legitimacy of its decisions depends on their capacity to be understood and accepted by the general population, not

[67] STF, supra note 66, ADI 6341/DF, at 39.

just by an enlightened circle. This does not mean yielding to popular clamour or disproven post-truths, but rather striving to communicate decisions transparently, didactically, and respectfully to differences in perspective, and to create channels of interaction with society that allow for the correction of misconceptions. In practical terms: always include clear motivations and evidence in decisions; disclose the underlying factual grounds (e.g., statistical or expert data used); dialogue with other branches to jointly legitimise exceptional measures, avoiding the image of unilateralism; and know how to tolerate criticism, responding with arguments and clarifications, rather than only with sanctions or disdain.

Moreover, it would be salutary for judges themselves to adopt a posture of self-awareness of fallibility. Far from weakening their authority, this could reinforce it, as it would induce greater deliberation and care. A judge who recognises "not holding all the truth, but deciding based on the best available evidence, aware that distinct perspectives exist" conveys cognitive empathy and openness. This attitude can disarm an opponent, who feels at least heard, even if not satisfied. Conversely, the opposite attitude—unfortunately not uncommon—of some judges, ridiculing conservative viewpoints in public or presenting their decisions as the only possible moral path, tends to inflame resentment and undermine trust in impartial Justice.

Returning to the metaphor that titles the essay by Martinez and Scherch, it can be said that both the Judiciary and its critics suffer from some degree of "blindness": the Judiciary may have been blind to the institutional side effects of its heterodox actions, and critics may be blind to the real necessity that justified such actions. Breaking this double blindness requires effort from both sides to place themselves, even momentarily, in the position of the other—and this is, above all, an epistemological and imaginative exercise. Finally, it is emphasised that the recent Brazilian experience brings valuable lessons: it showed the risks of walking the tightrope between complicit inertia and alienating activism. If it did nothing, the STF would possibly be branded as omissive; by acting (as it did), it ended up branded as abusive. The way out of this dilemma may lie in intermediate and dialogical solutions.

For example, in its action against the "state of unconstitutional affairs" in prisons, the STF was relatively successful precisely when it involved other branches and society in constructing solutions, through the Prison Task Force Forum and cooperative monitoring. This collaborative approach needs to be applied to other contexts: instead of the STF assuming alone the burden of "fixing" the Republic's course, it should encourage multisectoral engagement—Executive, Legislature, civil entities—to jointly address challenges such as disinformation, institutional attacks, and humanitarian crises. Thus, the narrative that the STF acts in isolation or imperially is diluted, and the sense of a minimum democratic consensus emerging is promoted. The ideological orientation perceived in STF decisions does not necessarily imply militant action by the justices. Rather, it reveals operation within a cognitive matrix aligned with the liberal-Enlightenment worldview. Such a matrix is sustained by knowledge-producing institutions—such as universities, NGOs, and professional media—which, due to self-selective mechanisms, are mostly composed of individuals with a progressive profile. In this context, the epistemic community tends to reproduce premises dear to the left, rarely subjecting them to critical scrutiny. When the Judiciary incorporates these premises as scientific truths, without due epistemological examination, it ends up absorbing the implicit biases that accompany them.

It is concluded, therefore, that the Brazilian Judiciary has been acting as a guardian in a state of exception, engaging in debatable actions but motivated by the defence of constitutional order—which evidenced both virtues (protection of threatened rights) and dangers (overstepping formal limits). This conduct has been permeated by ideological beliefs reinforced by evidence not accessible to all, situated in a post-truth environment where its legitimacy is constantly disputed. Recognising these dynamics and seeking to mitigate them—without leftist or rightist biases—is essential to restore trust in the rule of law and, simultaneously, preserve the moral authority of the Judiciary. Ultimately, defending the Constitution is not only about applying its text, but also about convincing hearts and minds of its value; for this, the guardian must see and be seen, abandoning the blindness of absolute certainty and inviting society to share, with open eyes, in the continuous construction of justice.

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