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Stoicism and frivolous litigation: the virtue of moderation in the use of the judicial system

Stoicism and frivolous litigation: the virtue of moderation in the use of the judicial system

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SUMMARY

This article analyzes frivolous litigation in Brazil in light of the ethics of responsibility and moderation, based on Stoicism, and proposes that its application can contribute to a fairer and more balanced procedural practice. The study is based on the analysis of Stoic virtues, such as moderation, which seek to ensure the emotional and rational balance of the individual in his/her actions, avoiding excesses or impulses that harm harmonious coexistence. Frivolous litigation is identified as an improper use of the judicial system for delaying or vexatious purposes, impairing the effectiveness of Justice and overloading the courts. The 2015 Code of Civil Procedure provides specific sanctions for this conduct, seeking to preserve the social function of the process and the dignity of Justice. The article proposes that, by adopting Stoic principles such as moderation and reason, participants in the judicial process can contribute to the integrity of the legal system and to the promotion of a Democratic State of Law.
By applying Stoic philosophy, especially its virtues of self-control, rationality, and consciousness of duty, it is possible to combat frivolous litigation while preserving social justice and trust in legal institutions.
Keywords: Frivolous litigation. Ethics of responsibility. Moderation. Stoicism.
Virtues. Social justice.

ABSTRACT

This article analyzes frivolous litigation in Brazil in light of the ethics of responsibility and moderation, based on stoicism, and proposes that its application can contribute to a fairer and more balanced procedural practice. The study starts from the analysis of Stoic virtues, such as moderation, which seek to guarantee the emotional and rational balance of the individual in their actions, avoiding excesses or impulses that harm harmonious coexistence. Frivolous litigation is identified as an improper use of the judicial system for delaying or vexatious purposes, harming the effectiveness of Justice and overloading the courts. The 2015 Civil Procedure Code provides specific sanctions for this conduct, seeking to preserve the social function of the process and the dignity of Justice. The article proposes that, by adopting Stoic principles such as moderation and reason, participants in the judicial process can contribute to
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the democratic rule of law. By applying Stoic philosophy, especially its virtues of self-control, rationality, and consciousness of duty, it is possible to combat frivolous litigation while preserving social justice and trust in legal institutions.
Keywords: Frivolous litigation. Ethics of responsibility. Moderation. Stoicism. Virtues. Social justice.

1. INTRODUCTION

This article analyzes frivolous litigation in Brazil in light of the need to affirmation of the ethics of responsibility and the virtue of moderation in the use of the system judiciary. Using a theoretical approach based on philosophical, constitutional and procedural, it seeks to demonstrate how abusive litigation practices compromise the effectiveness of justice and threaten the integrity of the democratic rule of law.

The 1988 Federal Constitution established principles that ensure broad access to Justice and the reasonable duration of the process, imposing on those under jurisdiction and on the operators of the The right to act with loyalty and good faith. However, the Brazilian forensic reality highlights the trivialization of the judicialization of conflicts, the instrumentalization of Power Judiciary for merely delaying or vexatious purposes and the consequent overload of courts.

Data from the *Justice in Numbers 2024* report , published by the National Council of Justice (CNJ), demonstrate that, in 2023, approximately 71% of the cases filed in the Judiciary Branch were concentrated in State Justice, with emphasis on Law actions Civil, especially contractual obligations and compensation for moral and material damages. Such panorama highlights the intensity of judicialization and suggests that, often, the use of justice system exceeds the limits of procedural good faith, overloading the courts and compromising the effectiveness of the fundamental right to a reasonable duration of the process.

The methodology adopted is qualitative, with a theoretical-dogmatic focus, consisting of critical analysis of classical philosophical sources (Zeno of Citium, Seneca, Epictetus, Marcus Aurélio), contemporary virtue ethics (MacIntyre) and civil procedural legislation Brazilian law, especially the 2015 Civil Procedure Code. The research also uses the specialized legal doctrine to contextualize frivolous litigation in the procedural system.

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The article is structured in five sections: the first explores the philosophical foundation of moderation in Stoicism and its relevance to the ethics of coexistence; the second discusses the configuration of frivolous litigation in Brazilian law and its ethical implications; the third examines the fundamental ethical principles for responsible legal practice; the fourth analyzes procedural action in the context of the Democratic Rule of Law, highlighting the importance of moderation; and finally, the fifth proposes the application of Stoic teachings as an ethical-legal basis for responsible and moderate procedural practice.

The aim is to contribute to the critical understanding of the phenomenon of litigation. frivolous, pointing out paths for the construction of a legal culture guided by ethical responsibility and the effectiveness of fundamental rights.

2. PHILOSOPHICAL BASIS: THE VIRTUE OF MODERATION IN STOICISM

Stoicism, as a philosophical system that emerged in the 3rd century BC, proposes that life good *(eudaimonia)* is achieved through the practice of virtues guided by reason. Among these virtues, moderation, also called temperance *(sÿphrosynÿ),* plays a role fundamental, as it ensures the individual's internal balance in the face of impulses and external circumstances.

Zeno of Citium, founder of the Stoa, taught that moderation is conscious control of desires and actions, allowing the individual to remain in conformity with the rational nature that was conferred upon it. In this sense, Stoic moderation is not repression arbitrary of feelings, but conscious exercise of inner freedom, where passions *(pathé)* are replaced by rational and virtuous states *(eupatheiai).*

In Seneca, moderation translates into the ability to avoid emotional extremes, reaching a state of serenity *(ataraxia),* necessary for making fair decisions and considered. In the *Letters to Lucilius,* the philosopher states:

> "True good is not found in the abundance of external goods, but in the wise restraint of desires." (SENECA, *Letters to Lucilius,* Letter IX)

Epictetus, in his *Manual,* advises that moderation arises from the understanding of nature of things:

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> "It is not things that disturb men, but the opinions they form about them." (EPICTETUS, *Manual,* §5)

Thus, moderation requires rational discernment about what is under our control. control and what is alien to us.

Marcus Aurelius, in his *Meditations,* reinforces the need for temperance in action social:

> "Be like a rock against which the waves break: it stands firm, and around it the waves are calm." (MARCUS AURELIUS, *Meditations,* Book IV, §49)

This philosophical understanding transcends the individual sphere and reveals an ethics of coexistence: moderation is a condition for fair, harmonious and virtuous relationships. Pierre Hadot notes that Stoicism is first and foremost a practice:

> "Ancient philosophy proposed to transform the entire personality of the individual." (HADOT, 2006, p. 85)

In contemporary thought, Alasdair MacIntyre returns to the centrality of virtue in *After Virtue* (1981). For MacIntyre, virtues are acquired dispositions that allow achieve the internal goods of social practices. Moderation, in this context, is not just a personal ideal, but a requirement for the integrity of human institutions. He states:

> "A practice can only flourish when its participants cultivate the virtues that make possible the realization of internal goods." (MACINTYRE, *After Virtue,* 1981, p. 187)

Applied to the legal field, this means that the practice of the process, while socially structured activity in search of justice, requires moderation of its participants. Litigating frivolously or irresponsibly undermines the internal good of the own justice system.

Therefore, the virtue of moderation, according to classical stoicism and its reinterpretation contemporary virtue ethics, is configured as an ethical pillar not only for the personal development, but also for the preservation of social and institutional order. In

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legal field, moderation does not only translate into emotional balance or posture respectful between the parties, but in the conscious choice to litigate only when necessary and proportionate manner. The constitutionally guaranteed right of action is not a license unrestricted to act according to passionate or selfish interests, but must be exercised under the aegis of virtue, with responsibility and respect for the common good.

In this sense, frivolous litigation represents the practical denial of moderation: it is the expression of disordered impulses, such as greed, revenge or the desire for harming others, which the Stoics identified as passions (pathé) contrary to nature rationality of the human being. By seeking undue advantages, overloading the Judiciary or distort the process, the frivolous litigant acts against the public purpose of the justice system and violates the ethical principle of virtuous coexistence.

Thus, to be inspired by Stoic moderation is to recognize that the use of the judicial system demands restraint, prudence and self-government, qualities without which the very idea of justice is corrupt. The virtue of moderation is therefore not a moral adornment, but a requirement ethics for the preservation of the Democratic Rule of Law and for the implementation of justice as common good.

3. FRIVOLOUS LITIGATION IN THE BRAZILIAN LEGAL SYSTEM

Frivolous litigation, also known as bad faith litigation, is defined as the misuse of the judicial system for purposes unrelated to procedural good faith and the implementation of justice. This is conduct that, far from seeking the protection of a legitimate right, aims delay the progress of the proceedings, obtain undue advantages or harm the opposing party. In the Brazilian legal system, frivolous litigation is expressly disapproved, finding normative forecast and specific sanctions.

The 2015 Code of Civil Procedure (CPC/2015), in its article 79, provides that:

> “Anyone who litigates in bad faith as plaintiff, defendant or intervener.”

Furthermore, article 80 of the CPC lists, by way of example, the hypotheses of bad faith, among which the following stand out: altering the truth of the facts; using the process for the purpose illegal; provoke manifestly unfounded incidents; oppose unjustified resistance to progress of the process; and proceed recklessly in any act of the process.

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The sanction for the litigant in bad faith may include a fine, compensation to the opposing party and obligation to reimburse procedural expenses, under article 81 of the CPC/2015. The objective of these penalties is not only to repair the concrete damage caused, but also to protect the social function of the process and the regular functioning of the Judiciary.

The 1988 Federal Constitution, by ensuring in article 5, item XXXV, the right to access to justice ("the law shall not exclude from the assessment of the Judiciary injury or threat to right"), establishes, implicitly and necessarily, that this right must be exercised in a manner ethical and responsible. The abuse of the right of action, therefore, is incompatible with the order constitutional and compromises fundamental principles such as due process, reasonable duration of the process and the dignity of justice.

Doctrinally, authors such as Fredie Didier Jr. point out that frivolous litigation constitutes a true deviation from the purpose of procedural law, insofar as it transforms the legitimate instrument of jurisdiction in a weapon of persecution or opportunism. In the words from the proceduralist:

> "To litigate in bad faith is to corrupt the very nature of the process, which is a instrument intended for the realization of substantive law in accordance with the justice." (DIDIER JR., Fredie. *Civil Procedural Law Course,* 2020, p. 87)

The repression of frivolous litigation is also an imperative of judicial efficiency. The congestion of the courts, the delay in the provision of jurisdiction and the delegitimization of Judiciary as a mediator of social conflicts are, to a large extent, aggravated by proliferation of unfounded or abusively handled demands.

According to the *Justice in Numbers 2024 survey,* published by the Council National Court of Justice (CNJ), the most recurring issues in Brazilian courts involve civil liability for moral damages, compensation for material damages and the execution fiscal. This predominance of disputes over repetitive and, in many cases, low-level issues complexity, reveals the significant impact of abusive litigation on the overload of Power Judiciary. The trivialization of judicialization compromises the social function of the process and the public trust in institutions, demanding an ethical commitment from legal operators with moderation and responsibility in handling demands.

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Therefore, confronting frivolous litigation is a duty that goes beyond the domain technical process and penetrates the core of public ethics. The judicial process, as a means institutionalized form of realization of the law, requires its participants to consciously practice the virtue, especially moderation, which restrains selfish impulse and orders action toward fair. Without the cultivation of temperance, the right to action becomes an instrument of injustice and disorder, compromising the integrity of the Democratic State of Law. As warned Marcus Aurelius, in the Stoic spirit that animates this reflection:

> "Injustice is impiety. For universal nature has made rational beings to help each other, like feet, hands, eyelids, rows of teeth." (MARCUS AURELIUS, *Meditations,* Book VII, §13)

Thus, litigating responsibly is not only an act of respect for others, but of fidelity to the rational order of the social cosmos that Law seeks to reflect.

4. STOICISM AS AN ETHICAL-LEGAL FOUNDATION FOR THE COMBATING FRIVOLOUS LITIGATION

Stoicism, a philosophy that originated in the early 3rd century BC by Zeno of Citium, consolidated by philosophers such as Seneca, Epictetus and Marcus Aurelius, proposes an ethics that aims to the mastery of human passions and to rationality as a guide to action. Central to this philosophy is virtue as a fundamental principle for an ethical life, with reason being the basis for action, which implies moderation, justice, courage and practical wisdom.

Seneca states that: "The greatest virtue is to live in accordance with nature, and this means acting with reason and moderation in all aspects of life" (SENECA, On Tranquility of the Soul, IV). This maxim reveals the essence of stoicism, acting rationally, balanced and ethical, principles that apply not only to everyday life but also to legal field, where moderation and practical wisdom are crucial to ensuring justice and fairness in decisions.

In the legal context, Stoic principles are essential in combating litigation frivolous, which occurs when the process is used for revenge or opportunistic strategies, without legitimate basis. The decision to take legal action must be guided by reason, with the aim of seek justice, not for selfish impulses or interests. Frivolous litigation not only overloads the justice system, but also distorts the ends of justice, creating a

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environment where access to justice becomes unequal, favoring those who use the process for purposes other than the fair resolution of conflicts. This phenomenon contrasts with the values of the Democratic State of Law and with the ideals of stoicism, which promote a rational and ethical action, oriented towards the common good.

The idea that the judicial process should be used as a legitimate means for conflict resolution is in harmony with Stoic thought. The Judiciary should not be seen as a field of manipulation or strategic games, but as a public space intended for the promotion of justice.

In this way, litigation must be guided by the search for a fair result, not by exploitation of the system. Moderation and rationality in the use of the process, defended by stoicism, not only contribute to the efficiency of the judicial system, but also preserve public trust in legal institutions and strengthen social justice.

Stoicism offers valuable tools for avoiding and combating frivolous litigation. The first of these tools is the concept of Apatheia, which means the ability to not be slave to emotions, such as revenge, anger or hurt pride. These emotions often encourage unnecessary litigation (EPICTETO, 2008, p. 24). Apatheia allows the individual to act with more serenity and balance, reflecting before making any decision.

Self-control, or the ability to reflect before acting, is another central concept in stoicism and of great importance in the legal field. Instead of acting on impulse, the individual should choose to litigate only when there is really a need for legal protection (SENECA, 2015, p. 44). Self-control allows the parties involved in the judicial process to make more considered decisions, aligned with the public interest and the common good.

Finally, Consciousness of Duty involves the understanding that the judicial process is not a playground, but a means of promoting social justice. The judicial system should be used to resolve disputes in a fair and equitable manner, not as a tool for personal whims (MARCO AURÉLIO, 2009, p. 38). The individual who acts with Consciousness of Duty understands the responsibility of his behavior, respecting the legal order and contributing to the common good.

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From a Stoic perspective, frivolous litigation represents a serious ethical deviation, as it results of impulsive action, guided by disordered passions, and not by reason. Virtuous action requires that the individual subordinates his immediate interests to the duty to promote the common good and respect the rational order of social life.

Seneca notes that "anger is a temporary madness, and therefore should not be considered a rational emotion" (SENECA, 2015, p. 45). When litigation is driven by feelings of revenge or wounded pride, it reflects exactly this failure to act rationally, prioritizing momentary emotions over reason and justice. The Stoicism, therefore, offers an ethical model for legal practice that distances itself from frivolous litigation and favors action guided by reflection and the public interest.

Stoicism, by advocating the practice of virtues such as moderation, justice, courage and wisdom, offers a solid ethical basis for combating frivolous litigation within the scope of legal. Rationality and self-control, which are fundamental elements of this philosophy, can be directly applied to the way lawyers, judges and parties involved in judicial process make their decisions.

This fight is not limited to punishing inappropriate behavior, but also to promoting a more responsible and ethical legal culture. By following Stoic principles, the society can strengthen the judicial system, preserving its legitimacy and trust public in legal institutions. In this way, Stoicism not only contributes to the improvement of individual ethics, but also for the construction of a Democratic State of a more fair, balanced and equitable law.

5. VIRTUE ETHICS AND PROCEDURAL ACTION IN THE STATE DEMOCRATIC BY LAW

Virtue ethics focuses on the inner formation of the agent, seeking not only compliance with external norms, but the practice of virtuous actions oriented towards social well-being. Aristotle, when dealing with human rationality in Book VI of *Nicomachean Ethics,* identifies five fundamental dispositions through which the soul reaches truth: "art, science, discernment, philosophical wisdom and intelligence" (ARISTOTLE, 2014, VI, 3, 1139b, 2-4).

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Among these provisions, *phronesis* (discernment or prudence) stands out as that which guides practical action, and is therefore essential to ethical action, including within the scope procedural in the Democratic State of Law. Furthermore, Aristotle emphasizes that "the prudence is a rational disposition aimed at action, concerning what is good or bad for the human being" (ARISTOTLE, 2014, VI, 5, 1140b, 5-7).

In the procedural context, the action of subjects, lawyers, magistrates and parties, does not may be limited to mechanical compliance with the law, but must be guided by rationality practice that seeks to achieve substantial justice. There cannot be a use indiscriminate and privatizing judicialization, as this contributes to judicial slowness and for the proliferation of demands that clog up procedural action with frivolous causes, many of which could be resolved administratively, through dialogue or by simple use of rationality.

This perspective is particularly relevant in the Democratic State of Law, in in which the judicial process is configured as a public space for the realization of rights fundamental. Article 5, item XXXV, of the Federal Constitution ensures that "the law shall not will exclude from the assessment of the Judiciary any injury or threat to a right".

However, the exercise of this right also imposes the duty of responsibility: Access to justice must be exercised ethically and in moderation, avoiding the abusive use of the process which compromises the effectiveness of jurisdiction and the integrity of democratic institutions.

As Epictetus teaches, "it is not facts that disturb men, but the judgment that we make of facts" (EPICTETO, 2008, p. 24). This rationality in action, based on self-control and prudent perception of circumstances, should also guide the use that is made of the judicial process. Moderation, in this scenario, is not a mere private virtue, but a public imperative of preserving justice and the democratic pact itself.

The process, as a public instrument, requires its operators not only technical competence, but also ethical virtues that ensure its correct social function. In this way, virtue ethics, especially moderation, becomes fundamental to responsible procedural action in the Democratic State of Law.

It imposes a posture of self-restraint, prudence and respect for others, recognizing that the process is a public space intended for the promotion of justice. By rescuing the

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importance of virtues in forensic practice, contributes to the formation of a culture more rational legal system, committed to the common good and the preservation of legitimacy democratic.

6. FINAL CONSIDERATIONS

The analysis developed highlights the problem of frivolous litigation from the perspective of virtue ethics, especially in light of the moderation proposed by Stoic philosophy. It is noted that the irresponsible use of procedural instruments compromises the effectiveness of the justice system, unduly burdens the judicial machine and undermines the ideal of substantial justice that supports the Democratic State of Law, notably with regard to guarantee of effective access to a fair legal order.

The ethical approach, centered on the virtue of moderation, proves to be essential for understanding that the process must be managed responsibly, guided by rationality, good faith and commitment to the common good. Reading the legislation in force, from the perspective of virtue theory, demonstrates that the containment of reckless litigation cannot be restricted to the application of formal sanctions, requiring, furthermore, the construction of a legal culture based on prudence, intellectual honesty and respect for the function public of the process.

Stoic thought, by emphasizing rationality, self-control and virtue as foundations of ethical life, presents itself as a valuable theoretical reference for the formation of legal operators committed to ethical responsibility, avoiding the use distorted jurisdiction. The promotion of the virtue of moderation in procedural practice reveals therefore, indispensable for the realization of fundamental rights and for the strengthening the legitimacy of the Democratic Rule of Law.

In this context, the implementation of educational and training measures is proposed aimed at legal professionals, with an emphasis on promoting virtue ethics as basis of procedural action. It is also recommended to include content focused on philosophy morality and ethical responsibility in the curricula of law courses, in order to foster critical awareness about the moderate and responsible use of jurisdiction. At the same time, it is necessary to if the strengthening of legal mechanisms to combat frivolous litigation, such as the application strict enforcement of the penalties provided for in the procedural codes and the judicious use of instruments such as the incident of abuse of the right to litigate.

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The combination of educational practices and repressive measures is essential for the construction of a more ethical procedural culture, effectively committed to the realization of justice, the protection of fundamental rights and the preservation of the integrity of the Democratic State of Law.

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