

BETWEEN THE LIGHTHOUSE AND THE LABYRINTH

Superior Courts as Supreme Courts and the Paradoxes of the Precedent-Based Model in Brazilian Law

Professor Murillo Gutier¹

BETWEEN THE LIGHTHOUSE AND THE LABYRINTH	1
Introductory Metaphor	1
1. The Rise of the Supreme Court Model in Brazilian Procedural Law Debate	2
1.1 Daniel Mitidiero's Thesis: The Concrete Case as a Mere Starting Point	2
1.2 Luiz Guilherme Marinoni's Thesis: The Precedent as a Complement to Legislative Activity	3
1.3 Hermes Zaneti Jr.'s Thesis: Apex Courts and an Adequate Theory of Precedents	3
2. The Underlying Debate: Transcendentalists versus Hermeneuticians	3
2.1 The Transcendental Pretension and its Concrete Limits	4
2.2 The Absence of the Necessary "Mode of Being" for a System of Precedents in Brazil	4
3. The Six Paradoxes of the Model: Contradictions that Undermine its Sustainability	5
3.1 First Paradox: Incompatibility with the Constitutional Function of the Superior Courts	5
3.2 Second Paradox: The Interpretive Monopoly as an Instrument of Normative Domination	5
3.3 Third Paradox: Judicial Proceedings as an Instrument of Authority, not of Democracy	6
3.4 Fourth Paradox: The Concrete Case as a Pretext and the Construction of "Clock-Precedents"	6
3.5 Fifth Paradox: The Impossibility of Reviewing Precedents and the Petrification of Law	7
3.6 Sixth Paradox: The Legislative Importation of a "Mode of Being" that Brazil Does Not Yet Possess	7
4. Conclusion: The Limits of the Model and the Need for a Democratic Theory of Precedents in Brazil	8
• Logic of the Theme: The Supreme Court Model and its Paradoxes	8
• Synoptic Chart: The Supreme Court Model and its Paradoxes	9
• Glossary	11
• References	13

Introductory Metaphor

Imagine a lighthouse built atop a rocky cliff: its mission is to illuminate the path of sailors, warning them of submerged dangers and guiding them safely to port. Now suppose that, at a certain point, the keepers of that lighthouse decide not merely to illuminate - but to decree, definitively and without appeal, exactly which route every vessel must follow. The lighthouse, which once guided, begins to command. The light, which once protected, becomes a means of control. This, in essence, is the central critique developed in the present text: the model of the so-called **Supreme Courts**, by seeking to replace the open interpretation of Law with binding precedents emanated from a judicial apex, risks transforming the Superior Courts from guides of the legal system into absolute arbiters of normative meaning. And there is something even more troubling in this pretension: the keepers of the lighthouse

¹ Professor of Civil Procedural Law, Constitutional Law, and Administrative Law at Unipac-Uberaba and UniFactus-Uberaba. Master of Laws (LL.M.) from PUC-MG (Pontifical Catholic University of Minas Gerais). Attorney-at-Law since 2003. E-mail: murillo@gutier.adv.br

act as though they stand above the storms - as if they were not themselves sailors subject to the same waves, the same fog, and the same historical finitude as everyone else. It is precisely this labyrinth - built of theoretical paradoxes and a philosophically unsustainable pretension - that the following text traverses and denounces.

1. The Rise of the Supreme Court Model in Brazilian Procedural Law Debate

With the enactment of the Brazilian Code of Civil Procedure of 2015 (CPC/2015) and the intense discussions surrounding the approximation between the "*common law*" and "*civil law*" legal systems, as well as the role of precedents in Brazilian procedural law, a significant portion of legal scholarship began to argue that the Federal Supreme Court (*Supremo Tribunal Federal* - STF) and the Superior Court of Justice (*Superior Tribunal de Justiça* - STJ) should function as **Supreme Courts** - rather than merely as appellate review tribunals. This proposal represented a significant shift in the understanding of the jurisdictional function of Brazil's Superior Courts within the country's constitutional legal order. (Cf. Mundim, 2026; Mundim, 2022; Mitidiero, 2014)

The leading proponents of this model - Professors Daniel Mitidiero, Luiz Guilherme Marinoni, and Hermes Zaneti Jr. - argue, in essence, that the role of Supreme Courts consists in guiding the application of Law through a proper interpretation of the legal order, with the concrete case serving merely as the vehicle through which these courts become capable of establishing **binding precedents**. In this view, judicial proceedings would not be an end in themselves, but rather the instrument through which the Court constructs norms to guide society as a whole and the entire Judiciary. (Cf. Mundim, 2026; Mitidiero, 2014, p. 55; Mitidiero, 2016)

Within this model, the precedent would cease to be the resolution of an individual dispute and would become a prospective source of Law - that is, forward-looking and capable of binding subsequent decisions by lower judges and courts. The authority of the precedent would therefore rest upon the interpretive prestige of the Superior Courts themselves, which would assume the mission of conferring unity and predictability upon the legal system as a whole. (Cf. Mundim, 2026; Mitidiero, 2016, p. 77)

1.1 Daniel Mitidiero's Thesis: The Concrete Case as a Mere Starting Point

For Daniel Mitidiero,² Supreme Courts perform an eminently interpretive and prospective function. Rather than resolving the dispute submitted to their adjudication, their primary task would be to assign meaning to the Law - in such a way that this meaning guides the resolution of all future similar cases. The concrete case would serve, accordingly, merely as a starting point - a pretext - for the Court to establish the interpretation to be universally observed, thereby promoting legal certainty, freedom, and equality. (Cf. Mundim, 2026; Mitidiero, 2021, p. 17)

The Brazilian professor thus distinguishes between the concept of a **decision** and that of a **precedent**: whereas the decision resolves the individual case, the precedent is the Law itself as properly interpreted by the Supreme Court from that case - a general norm judicially constructed. Under this view, the inherent indeterminacy of Law would be corrected through the formation of mandatory precedents issued by the Superior Courts, which would confer interpretive unity upon the legal order. (Cf. Mundim, 2026; Mitidiero, 2020, p. 48; Mitidiero, 2016, p. 77)

² Jurist Daniel Mitidiero is an influential professor of Civil Procedural Law at the Federal University of Rio Grande do Sul, in Brazil.

1.2 Luiz Guilherme Marinoni's Thesis: The Precedent as a Complement to Legislative Activity

Luiz Guilherme Marinoni³ argues that the decisions of Supreme Courts orient social life, guide the choices of judges and courts, and contribute to the development of Law alongside the Legislature. Supreme Courts would have the function of providing **completeness** to legislative activity - that is, filling the gaps and ambiguities of legislation through precedents endowed with binding force, operating as an indispensable complement to the process of norm creation. (Cf. Mundim, 2026; Marinoni, 2016)

Like Mitidiero, Marinoni maintains that the indeterminacy of Law would be overcome through the formation of mandatory precedents, which would reduce uncertainty and guide the conduct of citizens and legal practitioners alike. The role of the Supreme Court would, therefore, extend beyond that of an adjudicator of individual disputes to encompass the dimension of supreme interpreter and creator of broadly applicable legal norms. (Cf. Mundim, 2026; Marinoni, 2016)

1.3 Hermes Zaneti Jr.'s Thesis: Apex Courts and an Adequate Theory of Precedents

Hermes Zaneti Jr.⁴ adds that only a legal order that recognizes in the Superior Courts the role of **apex courts** - functioning effectively as Supreme Courts - will be able to develop an adequate theory of precedents capable of achieving its fundamental objectives: rationality, reliability, legal certainty, predictability, and effectiveness. Furthermore, such precedents should possess essential characteristics such as universality, normativity, binding force, and horizontal and vertical stability. (Cf. Mundim, 2026; Zaneti Junior, 2014, p. 178)

In summary, all three authors converge upon a proposal in which the Superior Courts act as supreme interpreters of the Law, creating prospective precedents that reduce the uncertainties of the legal order and guide society as a whole through their decisions - a kind of permanent normative lighthouse, endowed with unquestionable authority. (Cf. Mundim, 2026; Mitidiero, 2014; Marinoni, 2016; Zaneti Junior, 2014)

2. The Underlying Debate: Transcendentalists versus Hermeneuticians

Before analyzing the paradoxes of the model, it is essential to understand the philosophical debate that underpins it. Eduardo José da Fonseca Costa identifies, with precision, two major competing currents in the Brazilian debate on precedents: the **transcendentalists** - a term designating the proponents of the Supreme Court model, such as Mitidiero, Marinoni, and Zaneti Jr. - and the **hermeneuticians**, represented primarily by Lenio Streck and democratic procedural legal scholarship. At its core, this dispute replicates, in the field of law, the philosophical confrontation between the phenomenology of Husserl and that of Heidegger. (Cf. Costa, 2016)

The transcendentalists proceed from the premise that Superior Courts are - or should be - organs capable of producing universal legal pronouncements, valid for all future cases, from a supposedly neutral and privileged vantage point. Under this view, concrete cases would be placed in brackets - relegated to a secondary plane - as if judges were endowed with a purified consciousness capable of extracting the pure meaning of Law independently of the historical and factual circumstances of each dispute. (Cf. Costa, 2016; Mundim, 2026)

The hermeneuticians, on the other hand, reject this pretension to neutrality and abstract universality. For this school of thought, Law can only be understood and applied from within the

³ Jurist Luiz Guilherme Marinoni is an influential professor of Civil Procedural Law at the Federal University of Paraná, in Brazil.

⁴ Jurist Hermes Zaneti Júnior is an influential professor of Civil Procedural Law at the Federal University of Espírito Santo, in Brazil.

concreteness of individual cases, through a method of interpretation that advances and retreats, deepening with each new judgment, without ever arriving at a definitive and petrified truth. The uniformization of jurisprudence, from this perspective, must occur with reflective maturity and permanent openness to revision - never as a vertical and unappealable imposition by an interpretive apex. (Cf. Costa, 2016; Streck, 2018)

2.1 The Transcendental Pretension and its Concrete Limits

Costa points out that, in acting as transcendental organs, Superior Courts would claim to produce pronouncements capable of "ideally pre-possessing all future experience" - as if their precedents could capture, once and for all, every factual situation yet to arise. This pretension is, however, philosophically untenable: the courts, the judges who comprise them, the cases they adjudicate, the texts they interpret, and the jurisprudence they consolidate are all immersed in **history, finitude**, and the contingencies of the real world. None of them stands above time. (Cf. Costa, 2016)

The concrete case is not a secondary or dispensable datum - it is, as Costa aptly states, the "alpha and omega" of all jurisprudential knowledge. It is from the concrete case that all legal understanding departs and to which it returns. It is no coincidence that the Brazilian Federal Constitution of 1988, in defining the exceptional appellate jurisdiction of the STF (art. 102, III) and the STJ (art. 105, III), employs the expression "**adjudication of causes**" - not "production of general abstract norms" or "creation of abstract precedents." The constitutional text itself reveals, therefore, that the mission of these courts is to resolve concrete disputes - not to legislate from universalizing pretensions. (Cf. Costa, 2016; Mundim, 2026; Leal, 2017)

Furthermore, Costa observes that Superior Courts, when acting as if they were the "very world of Law," produce judgments in an isolated and self-referential manner, without the necessary methodological transparency that would allow the rational and democratic control of their decisions. The result is a form of **decisionism** - in which the Law becomes "whatever the courts say it is" - far removed from any objective scrutiny by citizens and other legal practitioners. (Cf. Costa, 2016; Streck, 2018)

2.2 The Absence of the Necessary "Mode of Being" for a System of Precedents in Brazil

There is also a practical and cultural dimension to the problem, identified by Costa with particular acuity: Brazil **does not possess** the set of habits, values, and legal practices that make possible the organic functioning of a system of binding precedents. In the "*common law*" tradition, respect for precedent is not merely a legislative imposition - it is a **mode of being** historically incorporated by the legal community over centuries of forensic practice. It is a legal culture learned through doing, through communal practice and tradition - not through the enactment of a code. (Cf. Costa, 2016)

In Brazil, by contrast, this cultural and hermeneutical foundation simply does not exist to the same degree. The attempt to import, by legislative decree, the binding precedent model of the "*common law*" into a "*civil law*" system without the necessary existential and cultural conditions creates a serious risk: rather than a functional system of precedents, what may emerge is an **institutional anomaly** - one that paradoxically worsens the legal uncertainty, inequality, and unpredictability that the model sought to combat. (Cf. Costa, 2016; Mundim, 2026)

As Costa summarizes, a system of "*stare decisis*" does not arise overnight, nor by legislative determination. And when there is legislative determination without the necessary cultural and hermeneutical conditions, what emerges is not a functional system - but something unforeseen and

potentially more problematic than the jurisprudential chaos it sought to overcome. (Cf. Costa, 2016; Abboud, 2016, p. 574)

3. The Six Paradoxes of the Model: Contradictions that Undermine its Sustainability

Although the Supreme Court model presents a seductive proposal of coherence and legal certainty, it harbors a series of **paradoxes** - internal contradictions that undermine its sustainability in light of the democratic constitutional framework inaugurated by Brazil's Federal Constitution of 1988. Criticism of this model is not recent and is supported by an extensive body of procedural legal scholarship. (Cf. Mundim, 2026; Mundim, 2022; Mundim, 2018; Costa, 2021; Costa, 2016; Magalhães, 2020; Streck, 2018)

3.1 First Paradox: Incompatibility with the Constitutional Function of the Superior Courts

The first and most evident paradox of the model lies in the fact that the proponents of Supreme Courts overlook that, in Brazil, the constitutional function of the STF and the STJ is that of **appellate review tribunals** - not courts with power to create Law. This conclusion follows directly from articles 102 and 105 of the Federal Constitution of 1988, which delineate the jurisdiction of these courts within the scope of constitutional review and the uniformization of the interpretation of federal infraconstitutional law. As Costa reinforces, the Constitution itself assigns to the STF and the STJ the **adjudication of causes** - not the production of general abstract prospective norms. (Cf. Mundim, 2026; Costa, 2016; Leal, 2017, p. 306-307)

Rosemiro Pereira Leal is categorical in affirming that Brazil does not have Supreme Courts, but rather appellate review tribunals. In the paradigm of a Democratic State, the STF and the STJ cannot act through the judicialization of politics as mythical guardians of the Constitution. The institute of the precedent adopted in §2 of art. 926 of the CPC/2015 must be understood in light of the normative content of the "*caput*" of that same provision and its §1, which require that jurisprudence be "stable, integral, and coherent" - and not that the Superior Courts create general prospective norms detached from concrete cases. (Cf. Mundim, 2026; Leal, 2017, p. 306-307)

3.2 Second Paradox: The Interpretive Monopoly as an Instrument of Normative Domination

The second paradox consists in the fact that, under the proposed model, the interpretation issued by the Supreme Courts would prevail over the normative meaning of legislation and the Constitution itself. In other words, it would be the precedents of the Supreme Courts - and not the legislative or constitutional text - that would define the meaning of Law, conferring upon these courts an almost unlimited power of **normative meaning manipulation**. Costa deepens this critique by observing that, under this model, Superior Courts do not merely apply the Law - they enclose it: they become "the very condition of possibility of Law itself," as if the legal world existed only within the tribunals. (Cf. Mundim, 2026; Costa, 2016; Streck, 2018)

Edward Lopes, in analyzing the mechanisms of human domination, warns that none is more efficient than the manipulation of the meanings of discourse. Whoever holds the power to define what words mean becomes the all-powerful arbiter of the values, objectives, and rules of conduct of a community. This warning is of great relevance to the debate on binding precedents: by conferring upon the Supreme Courts an interpretive monopoly, a structure of domination is created that may be instrumentalized against the very citizens the system purports to protect. (Cf. Mundim, 2026; Lopes, 1978, p. 4)

Unavoidable questions then arise: would Supreme Courts and their precedents be infallible? Would procedural parties be barred from interpreting legislation and the Constitution? How would the

interpretations issued by Supreme Courts be subject to control? What if the interpretation were entirely mistaken? Could a Supreme Court create Law contrary to legislation - "*contra legem*"? (Cf. Mundim, 2026; Streck, 2018; Costa, 2021, p. 21-22; Costa, 2016)

3.3 Third Paradox: Judicial Proceedings as an Instrument of Authority, not of Democracy

The third paradox of the model lies in the preservation of an anachronistic conception according to which **judicial proceedings** would serve as the instrument of a jurisdiction capable of resolving all social problems and aspirations. This is what critical procedural scholarship terms the "primacy of jurisdiction" - the belief that courts are the ultimate resolvers of collective conflicts, to the detriment of the democratic participation of citizens in the process of constructing the Law. Costa labels this logic **palatial-judicial responsibility** - a concentrated task of the oligodecisional type, in which few decide for all, operating "from the top down." (Cf. Mundim, 2026; Costa, 2016; Magalhães, 2020, p. 177; Leal, 2017, p. 305)

Lincoln Mattos Magalhães observes, with precision, that even if the action of Supreme Courts were to alleviate jurisprudential dispersion, such a solution would reduce judicial proceedings to the condition of a mere instrument for the authoritarian imposition of decisional standards, grounded in the reasoning of a few privileged interpreters. There is, therefore, an **antidemocratic bias** in the model, since the exclusive attribution to the Courts of the power to fix normative meaning eliminates any interpretive openness for citizens - what democratic procedural scholarship terms "*isomenic hermeneutics*" - an element fundamental to the realization of the Democratic Rule of Law. In contrast, Costa proposes a **community-forensic responsibility** - a diffuse task of the poly-interactional type, constructed "from the bottom up," across the different levels of the judiciary, grounded in the quality of arguments and the participation of all interested parties. (Cf. Mundim, 2026; Costa, 2016; Magalhães, 2020, p. 176-177)

3.4 Fourth Paradox: The Concrete Case as a Pretext and the Construction of "Clock-Precedents"

The fourth paradox of the model is particularly relevant from a procedural standpoint. By treating the concrete case merely as a pretext for the creation of precedents, the Supreme Court proposal confers superpowers upon the standardization of decisions by the Superior Courts - in a vertical and transcendental manner, imposed "from the top down" - without the precedent necessarily bearing any connection to the factual and legal reality of the dispute that gave rise to it. (Cf. Mundim, 2026; Pereira, 2021, p. 240-241)

Costa reinforces this argument with philosophical depth: the concrete case is not a dispensable or secondary datum - it is the permanent and irreplaceable starting point of all legal understanding. The court returns to the case in a circular movement of reading and re-reading, without ever being freed from it. For this reason, any system that treats the case as a mere pretext commits a fundamental philosophical error: it **confuses the instrument with the end**. The precedent cannot be detached from the factual and legal framework of the dispute under adjudication, since it is from that framework that it derives its existence and legitimacy. (Cf. Costa, 2016; Mundim, 2026; Rossi; Mundim, 2021, p. 206)

Rossi and Mundim have already noted that the formation of a precedent must proceed from the adjudication of the dispute, and must never serve as a mere pretext for the creation of prospective rulings - the so-called "**clock-precedents**" - since the decisional standard would be severed from the factual and legal context from which it originated. As Lenio Streck asserts, the concrete case "is the sole reason for the existence of courts." This is confirmed by the fact that, when adjudicating, for example, a repetitive special appeal, the STJ, by definition, evaluates the concrete dispute within the very same binding ruling. (Cf. Mundim, 2026; Rossi; Mundim, 2021, p. 206; Streck, 2018; Costa, 2016)

3.5 Fifth Paradox: The Impossibility of Reviewing Precedents and the Petrification of Law

The fifth paradox is identified by Lenio Streck: it is extremely difficult to reach the Supreme Courts for the review of their own rulings. Alongside the system of binding precedents, a rigid system of appellate filters operates, preventing the Courts from being subjected to the necessary epistemological control - that is, the possibility of recognizing and correcting their own errors. Costa complements this critique by observing that when a newly appointed justice capriciously revisits prior jurisprudence through the exclusive lens of their personal convictions and personality, the intended stability of precedents collapses - degenerating into disposable transience, the exact opposite of what the model promised. (Cf. Mundim, 2026; Costa, 2016; Streck, 2018, p. 75)

This impossibility of review renders the system rigid and **petrifies the Law**, as "clock-precedents" seek a permanent stability that forecloses any possibility of construction, interpretation, and democratic oversight of binding pronouncements. Concrete examples of this tendency include the so-called "**defensive jurisprudence**" of the STJ and the requirement of demonstrating the relevance of the federal legal question for the admissibility of Special Appeals - mechanisms that prioritize purely quantitative efficiency to the detriment of the democratic legitimacy of decisions and the genuine constitutional function of the Superior Courts. (Cf. Mundim, 2026; Mundim, 2020, p. 142; Rossi; Mundim, 2021, p. 214-215; Rabelo; Mundim; Paoliello, 2020, p. 341-368)

Rossi and Mundim summarize the problem with precision: the juridification of Law through jurisprudence creates a situation of broad, unrestricted, and dangerous power conferred upon binding case law at the expense of legislation. This jurisprudence becomes self-referential, insofar as decisions no longer cite any legislative or constitutional provision, but merely feed upon prior jurisprudence - often without any connection to the issues actually at stake in the case under review. (Cf. Mundim, 2026; Rossi, 2015, p. 338; Rossi; Mundim, 2021, p. 214-215)

3.6 Sixth Paradox: The Legislative Importation of a "Mode of Being" that Brazil Does Not Yet Possess

The sixth paradox, identified by Eduardo Costa, is philosophical and cultural in nature, but carries profound practical consequences. The Supreme Court model presupposes that a system of binding precedents can be installed in Brazil simply by force of legislation - as if the enactment of the CPC/2015 were sufficient to cause courts, lawyers, and judges to begin operating according to the logic of "*stare decisis*." This assumption ignores an essential fact: the organic functioning of a precedent system requires a juridical-cultural **mode of being** that is constructed over centuries of forensic practice - and which Brazil, in its "*civil law*" tradition, has simply not incorporated in the same way as "*common law*" systems. (Cf. Costa, 2016; Mundim, 2026; Abboud, 2016, p. 574)

This "mode of being" to which Costa refers is not a technique that can be learned from manuals - it is a set of habits, values, and dispositions acquired through historical coexistence with the practice of respecting and constructing precedents. Without this cultural foundation, the mere legislative positivization of a system of mandatory precedents does not create a more predictable and secure legal environment: on the contrary, it creates the risk of an **institutional anomaly**, in which the imported model is applied in a distorted manner, generating even greater instability, inequality, and legal uncertainty than the problem it sought to resolve. (Cf. Costa, 2016; Mundim, 2026)

The paradox is, therefore, revealing: a model designed to guarantee legal certainty may, precisely because of its inadequacy to the cultural and constitutional soil of Brazil, produce the exact opposite - a self-referential, opaque, inaccessible system, resistant to democratic control. And the very proponents of the model, as Costa foresees with lucid critical insight, will likely conclude, some years hence, that their doctrines were never understood or practiced by the legal community. The most

probable explanation, however, is not the misunderstanding of the doctrine by the courts - but rather the misunderstanding of Brazilian legal reality by the doctrine. (Cf. Costa, 2016)

4. Conclusion: The Limits of the Model and the Need for a Democratic Theory of Precedents in Brazil

The contradictions and paradoxes of the model advocated by Mitidiero, Marinoni, and Zaneti Jr. - deepened by Eduardo Costa's philosophical analysis - demonstrate that the Supreme Court thesis **lacks juridical sustainability in Brazil** in light of the constitutional framework established by the Federal Constitution of 1988. The model is incompatible with democratic procedurality and with the democratic control exercised through due process of law - a fundamental constitutional guarantee that cannot be suppressed by any procedural theory, however well-intentioned. (Cf. Mundim, 2026; Costa, 2016; Mundim, 2022; Mundim, 2018; Leal, 2017)

For it to be possible to construct a genuinely Brazilian and constitutionally adequate procedural theory of precedents, the primacy of jurisdiction cannot prevail. The theory of precedents must be built upon **democratic legitimacy**, grounded in the fundamental rights and guarantees of citizens constitutionally ensured from the very normative plane of the legal order. The precedent must arise from the case, respect the participation of procedural parties, and be subject to democratic control - and not function as a decree issued by an interpretive apex isolated from the social and historical reality in which it is embedded. (Cf. Mundim, 2026; Costa, 2016; Leal, 2017, p. 305; Torres, 2024; Mundim, 2022)

Returning to the metaphor of the lighthouse: democratic Law needs a light that illuminates the path - not a lighthouse that decrees, in absolute and unappealable terms, which route every vessel must follow. And more: the keepers of the lighthouse must recognize that they too are sailors - equally subject to the storms, the fog, and the finitude of the human historical condition. The lighthouse guides; it does not command. And those who tend it stand in the same sea as everyone else. Brazil's Superior Courts, within the country's constitutional model, guide the interpretation of Law - but they cannot replace the legislator, silence citizens, and close the doors of democratic participation through petrified precedents. The answer to the labyrinth of paradoxes lies precisely in openness: in the dialogical, participatory, historically situated, and democratically controlled construction of Law. The precedent that arises from the concrete case, respects the parties, and submits itself to control - that is the true lighthouse that illuminates without imprisoning.

- **Logic of the Theme: The Supreme Court Model and its Paradoxes**

The text may be understood through the following systemic logic. There is a correct diagnosis: the indeterminacy of Law and the dispersion of jurisprudence are real problems that affect legal certainty in Brazil. From this diagnosis, the precedent-based doctrine - led by Mitidiero, Marinoni, and Zaneti Jr. proposes a solution: to transform the STF and the STJ into Supreme Courts that create binding and prospective precedents, conferring unity and predictability upon the legal order.

The problem lies in the proposed solution, not in the diagnosis. The model proceeds from three premises incompatible with the Federal Constitution of 1988 and with Brazilian legal reality: (a) that Superior Courts may and should create general norms from concrete cases treated as mere pretexts; (b) that Superior Courts are organs endowed with a neutral and privileged perspective, standing above the history and contingencies of concrete cases; and (c) that a system of binding precedents can be installed by legislative decree, regardless of the cultural and hermeneutical conditions necessary for its organic functioning.

This threefold error unfolds into six interconnected paradoxes: (1) the STF and the STJ are, constitutionally, appellate review tribunals - not creators of Law; (2) conferring upon the Courts an

interpretive monopoly is equivalent to creating a structure of normative domination; (3) reducing judicial proceedings to an instrument of authoritarian standardization violates procedural democracy; (4) treating the concrete case as a mere pretext severs the precedent from its legitimate factual and legal foundation; (5) the impossibility of reviewing precedents petrifies the Law and compromises the legitimacy of decisions; and (6) importing by legislation a "mode of being" that Brazil does not yet culturally possess may generate an institutional anomaly more serious than the problem it sought to resolve.

The logic of the system is, therefore, as follows: the more interpretive power is concentrated in a judicial apex without effective mechanisms of control, the further the Law strays from its democratic legitimacy. And the more the historicity and finitude of the courts themselves are ignored, the more an edifice promising eternity is constructed upon sand. The solution is not to eliminate precedents - which play a legitimate role in guiding jurisprudence - but to construct them from a democratic theory that respects fundamental procedural rights, citizen participation, the democratic control of judicial decisions, and the cultural reality of Brazilian Law. The precedent must be the product of the case, not its master. The Law must be built with citizens - not imposed upon them from a high cliff that is, in truth, as exposed to the storms as any other point along the shore.

- **Synoptic Chart: The Supreme Court Model and its Paradoxes**

Theme	Explanation
Context of the debate	With the CPC/2015, Brazilian legal scholarship began debating whether the STF and the STJ should function as Supreme Courts, creating binding precedents, in the context of the approximation between the " <i>common law</i> " and " <i>civil law</i> " systems. The debate intensified with the drafting and enactment of the new Code, becoming one of the most significant discussions in contemporary Brazilian procedural law.
The Supreme Court model	A doctrinal proposal by Mitidiero, Marinoni, and Zaneti Jr. according to which Superior Courts must interpret the Law and create prospective binding precedents, reducing uncertainty and guiding society and the Judiciary through their decisions. In this model, the concrete case serves merely as a pretext for the production of general jurisprudential norms.
Function of the precedent in the model	The precedent is not the resolution of an individual dispute, but rather a general legal norm judicially constructed by the Supreme Court, from the concrete case, to bind future decisions of lower judges and courts. Its authority would derive from the hierarchical and interpretive position of the Court that produced it.
Mitidiero's thesis	The concrete case is merely a pretext for the Court to establish the meaning of the Law. The action of Supreme Courts is proactive and interpretive: rather than adjudicating, they assign meaning to the Law to guide future decisions. The distinction between decision and precedent is central to his theory.

Marinoni's thesis	Supreme Courts must complement legislative activity, assigning meaning to statutes through binding precedents that orient social life, guide judges, and develop the Law alongside the Legislature. The precedent would serve as an instrument of normative completeness.
Zaneti Jr.'s thesis	Only a system that recognizes Superior Courts as apex courts can develop an adequate theory of precedents, with characteristics of universality, normativity, binding force, and horizontal and vertical stability.
Transcendentalists vs. Hermeneuticians	Costa identifies two competing camps: the transcendentalists (Mitidiero, Marinoni, Zaneti Jr.), who believe in the possibility of producing universal legal pronouncements by neutral and privileged Courts; and the hermeneuticians (Streck and democratic procedural scholarship), who affirm that the Law can only be understood from within concrete cases, in a circular and historically situated movement.
The transcendental pretension	Transcendentalists presuppose that Superior Courts are organs capable of extracting the pure meaning of the Law, above the historical and factual contingencies of individual cases. Costa demonstrates that this pretension is untenable: judges, courts, cases, and norms are all immersed in history and finitude - none of them stands above time.
The concrete case as "alpha and omega"	For Costa, the concrete case is the permanent and irreplaceable starting point of all legal understanding. The court returns endlessly to the case in a movement of reading and re-reading. To treat the case as a mere pretext is to confuse the instrument with the end - and compromises the very legitimacy of the precedent.
First paradox	In Brazil, the STF and the STJ are constitutionally appellate review tribunals (arts. 102 and 105 of the CF/88), and not Supreme Courts with the power to create Law. The CF/88 assigns to these courts the adjudication of "causes" - not the production of general abstract norms. The proposed model ignores this fundamental constitutional limitation.
Second paradox	Granting Courts a monopoly on interpreting the Law amounts to permitting the manipulation of normative meaning, creating a structure of domination that may operate against the very citizens it purports to serve. Under the transcendentalist model, the Law becomes "whatever the courts say it is" - without the possibility of objective rational control.
Third paradox	The model preserves the antidemocratic view that judicial proceedings are the instrument of a salvific jurisdiction. The oligodecisional logic ("from the top down") eliminates the interpretive openness of citizens (" <i>isomenic hermeneutics</i> ") and concentrates power in a few privileged interpreters, contrary to the Democratic Rule of Law.
Fourth paradox	Treating the concrete case as a mere pretext for the creation of precedents severs the precedent from its legitimate factual and legal foundation, generating "clock-precedents" detached from the

	procedural reality of the parties and from their fundamental procedural rights and guarantees.
Fifth paradox	The system of appellate filters prevents Supreme Courts from being held accountable and from correcting their own errors. This petrifies the Law and generates a self-referential jurisprudence, disconnected from legislation and the Constitution, that feeds upon itself - without any necessary connection to the cases that gave rise to it.
Sixth paradox	The model presupposes that a system of binding precedents can be installed by legislation, ignoring that " <i>stare decisis</i> " requires a juridical-cultural "mode of being" historically constructed. Without this foundation, the positivization of the system may generate an institutional anomaly that worsens legal uncertainty rather than combating it.
"Defensive jurisprudence" of the STJ	A set of jurisprudential orientations of the Superior Court of Justice that restrict the admissibility of appeals through rigorous formal and procedural criteria, privileging quantitative efficiency over the democratic legitimacy of decisions and the constitutional function of uniformizing federal infraconstitutional law.
Relevance of the federal legal question in the Special Appeal	An admissibility requirement introduced by Constitutional Amendment No. 125/2022 and regulated by Law No. 14,256/2022, demanding the demonstration of the relevance of the federal legal question at issue. Criticized for seeking purely quantitative efficiency, neglecting the democratic legitimacy of decisions and the genuine constitutional function of the STJ.
Art. 926 of the CPC/2015	A statutory provision requiring that courts uniformize their jurisprudence, keeping it stable, integral, and coherent. It must be interpreted in light of democratic proceduralism - and not as an authorization for the creation of general prospective norms detached from concrete cases.
Democratic alternative	A procedural theory of precedents compatible with the CF/88 must be grounded in democratic legitimacy, fundamental procedural rights and guarantees, the democratic control of judicial decisions, and the cultural reality of Brazilian Law - and not in the primacy of jurisdiction, interpretive monopoly, or the uncritical importation of the " <i>common law</i> " model.

- **Glossary**

Item	Explanation of the Precedent/Institute
Defensive jurisprudence of the STJ - General phenomenon	A set of jurisprudential orientations of the Superior Court of Justice (<i>Superior Tribunal de Justiça</i> - STJ) that restrict the admissibility of appeals through rigorous formal and procedural criteria. Court: STJ. General <i>ratio decidendi</i> : reduction of case

	<p>volume through formal admissibility filters. Criticized by Rossi, Mundim, Rabelo, and Paoliello for prioritizing quantitative efficiency over democratic legitimacy and the STJ's constitutional function of uniformizing federal infraconstitutional law. Costa adds that this phenomenon is symptomatic of the absence of the "mode of being" necessary for the organic functioning of a precedent system in Brazil. (Cf. Mundim, 2026; Costa, 2016; Rabelo; Mundim; Paoliello, 2020, p. 341-368)</p>
<p>Relevance of the federal legal question in the Special Appeal - Constitutional Amendment No. 125/2022 and Law No. 14,256/2022</p>	<p>An institute introduced by Constitutional Amendment No. 125/2022 and regulated by Law No. 14,256/2022, requiring, as a condition of admissibility of the Special Appeal (<i>Recurso Especial</i>), the demonstration of the relevance of the federal legal question at issue. Court: STJ. General <i>ratio decidendi</i>: qualitative selectivity in access to the STJ, modeled upon the general repercussion requirement for Extraordinary Appeals before the STF. Criticized by Mundim and Rossi for seeking purely quantitative efficiency, at the expense of the democratic legitimacy of decisions and the constitutional function of uniformizing federal law. (Cf. Mundim, 2026; Mundim, 2023; Rossi; Mundim, 2021, p. 214-215)</p>
<p>General repercussion in the Extraordinary Appeal - Art. 102, §3, CF/88</p>	<p>An admissibility filter for Extraordinary Appeals (<i>Recursos Extraordinários</i>) before the STF, requiring that the constitutional question debated present general repercussion - that is, economic, political, social, or legal relevance that transcends the subjective interests of the parties. Court: STF. General constitutional <i>ratio</i>: qualitative selectivity in access to the STF for constitutional questions. Referenced as the model that inspired the relevance requirement for Special Appeals before the STJ, and as part of the system of appellate filters that, in the critique of Streck, Mundim, and Costa, impede the epistemological control of the Superior Courts' own decisions. (Cf. Mundim, 2026; Costa, 2016; Streck, 2018, p. 75; Mundim, 2020, p. 142)</p>
<p>Art. 926, caput, §§ 1 and 2, of the CPC/2015 - Uniformization of jurisprudence</p>	<p>A statutory provision requiring courts to uniformize their jurisprudence and keep it stable, integral, and coherent (caput); that, in issuing summary statements, courts must adhere to the factual circumstances of the precedents that motivated their creation (§1); and that addresses the formation of binding precedents (§2). Doctrinal context: Rosemiro Pereira Leal argues that §2 must be understood in light of the caput and §1, rejecting the interpretation that authorizes Superior Courts to create general prospective norms detached from concrete cases. Costa adds that the mere positivization of this provision is insufficient to establish an organic precedent system without the necessary cultural and hermeneutical conditions. (Cf. Mundim, 2026; Costa, 2016; Leal, 2017, p. 306-307)</p>

<p>Arts. 102, III, and 105, III, of the CF/88 - Appellate jurisdiction of the STF and the STJ</p>	<p>Constitutional provisions assigning to the STF and the STJ jurisdiction to adjudicate "causes" through extraordinary and special appeals, respectively. Court: STF and STJ. Constitutional <i>ratio</i>: Brazil's Superior Courts are appellate review tribunals - organs that adjudicate concrete disputes - and not Courts empowered to create general abstract norms. Both Mundim and Costa ground in this provision the constitutional incompatibility of the Supreme Court model with the Brazilian legal order. (Cf. Mundim, 2026; Costa, 2016; Leal, 2017, p. 306-307)</p>
--	--

- **References**

ABBOUD, Georges. *Processo constitucional brasileiro*. São Paulo: Revista dos Tribunais, 2016.

COSTA, Eduardo José da Fonseca. *Processo e garantia*. Londrina: Thoth, 2021. v. 1.

COSTA, Eduardo José da Fonseca. Os tribunais superiores são órgãos transcendentais? *Consultor Jurídico - Conjur*, Dec. 03, 2016. Available at: <https://www.conjur.com.br/2016-dez-03/eduardo-costa-tribunais-superiores-sao-orgaos-transcendentais/>. Accessed: Apr. 02, 2026.

LEAL, Rosemiro Pereira. A questão dos precedentes e o devido processo. *Revista Brasileira de Direito Processual - RBDPro*, Belo Horizonte, year 25, n. 98, p. 295-313, Apr./Jun. 2017.

LOPES, Edward. *Discurso, texto e significação: uma teoria do interpretante*. São Paulo: Cultrix, 1978.

MAGALHÃES, Lincoln Mattos. *O processo democrático em xeque: a jurisprudencialização do Direito no CPC de 2015*. Belo Horizonte: Dialética, 2020.

MARINONI, Luiz Guilherme. *A ética dos precedentes: justificativa do novo CPC*. 2nd ed. rev., updated and expanded. São Paulo: Revista dos Tribunais, 2016.

MITIDIERO, Daniel. *Cortes superiores como cortes supremas: do controle à interpretação da jurisprudência ao precedente*. 2nd ed. rev., updated and expanded. São Paulo: Revista dos Tribunais, 2014.

MITIDIERO, Daniel. *Precedentes: da persuasão à vinculação*. São Paulo: Revista dos Tribunais, 2016.

MITIDIERO, Daniel. *Reclamação nas Cortes Supremas: entre a autoridade da decisão e a eficácia do precedente*. São Paulo: Revista dos Tribunais, 2020.

MITIDIERO, Daniel. *Superação para frente e modulação de efeitos: precedente e controle de constitucionalidade no direito brasileiro*. São Paulo: Revista dos Tribunais, 2021.

MUNDIM, Luís Gustavo Reis. *Precedentes: da vinculação à democratização*. Belo Horizonte: D'Plácido, 2018.

MUNDIM, Luís Gustavo Reis. O antagonismo entre a ética dos precedentes e o Estado Democrático de Direito. *Revista Eletrônica de Direito Processual - REDP*, Rio de Janeiro, year 13, v. 20, n. 1, p. 315-340, Jan./Apr. 2019. Available at: <https://www.e-publicacoes.uerj.br/index.php/redp/article/view/31568/29253>.

MUNDIM, Luís Gustavo Reis. Precedentes: entre nuvens e relógios. *Revista Meritum*, Belo Horizonte, v. 15, n. 1, p. 118-146, Jan./Apr. 2020. Available at: <http://www.fumec.br/revistas/meritum/article/view/7759>.

MUNDIM, Luís Gustavo Reis. Aporias do modelo de Cortes Supremas. In: DOURADO DE ANDRADE, Francisco Rabelo. *Tópicos especiais de processo civil: análise crítica e perspectivas*. Belo Horizonte: RTM, 2022. v. 3, p. 109-124.

MUNDIM, Luís Gustavo Reis. A relevância da questão federal no Recurso Especial e o Castelo de Kafka. *Revista do Centro Acadêmico Afonso Pena*, v. 28, p. 1-18, 2023. Available at: <https://periodicos.ufmg.br/index.php/caap/article/view/47522/39416>.

MUNDIM, Luís Gustavo Reis. O modelo de Supremas Cortes e suas aporias. *Juridicamente.info*, Mar. 2026. Available at: <https://juridicamente.info/o-modelo-de-supremas-cortes-e-suas-aporias/>. Accessed: Apr. 02, 2026.

MUNDIM, Luís Gustavo Reis. Recurso especial: você não passará! In: CARVALHO, João Carlos Salles de; SOUSA, Lorena Ribeiro de Carvalho; MUNDIM, Luís Gustavo Reis; TORRES, Tiago Henrique. *Processo e(m) crítica: reflexões da escola mineira ao processo democrático*. Belo Horizonte: Fórum, 2024. p. 103-109.

MUNDIM, Luís Gustavo Reis; OLIVEIRA, Alexandre Varela de. Cortes supremas e a herança bülowiana na jurisprudencialização do direito. *Revista Eletrônica de Direito Processual - REDP*, Rio de Janeiro, year 13, v. 20, n. 3, p. 293-322, Sep./Dec. 2019. Available at: <https://www.e-publicacoes.uerj.br/index.php/redp/article/view/40557/30560>.

PEREIRA, João Sérgio dos Santos Soares. *A padronização decisória na era da inteligência artificial: uma possível leitura hermenêutica e da autonomia do direito*. Belo Horizonte: Caso do Direito, 2021.

RABELO, Júlia Gomide Antunes; MUNDIM, Luís Gustavo Reis; PAOLIELLO, Pedro Henrique Lacerda. Os perigos da nova jurisprudência do Superior Tribunal de Justiça. In: ALVES, Lucélia et al. *4 anos de vigência do Código de Processo de 2015*. Belo Horizonte: D'Plácido, 2020. p. 341-368.

ROSSI, Júlio César. *Precedente à brasileira: a jurisprudência vinculante no CPC e no novo CPC*. São Paulo: Atlas, 2015.

ROSSI, Júlio César; MUNDIM, Luís Gustavo Reis. O "estado da arte" da Reclamação no STF e no STJ: o gato de Schrödinger está vivo-morto? *Revista Eletrônica de Direito Processual - REDP*, Rio de Janeiro, year 15, v. 22, n. 3, p. 523-540, Sep./Dec. 2021. Available at: <https://www.e-publicacoes.uerj.br/index.php/redp/article/view/59868/39102>.

ROSSI, Júlio César; MUNDIM, Luís Gustavo Reis. Reclamação e cortes supremas: contrapontos às teses do professor Daniel Mitidiero. *Revista Brasileira de Direito Processual - RBDPro*, Belo Horizonte, year 29, n. 113, p. 199-217, Jan./Mar. 2021.

STEIN, Ernildo. *Mundo vivido: das vicissitudes e dos usos de um conceito da fenomenologia*. Porto Alegre: EDIPUCRS, 2004.

STRECK, Lenio Luiz. *Precedentes judiciais e hermenêutica: o sentido da vinculação no CPC/2015*. Salvador: JusPodivm, 2018.

TORRES, Tiago Henrique. Pensando a legitimidade decisória a partir do processo. *Contraditor: o debate em primeiro lugar*. Available at: <https://www.contraditor.com/pensando-a-legitimidade-decisoria-a-partir-do-processo/>. Accessed: Apr. 02, 2026.

ZANETI JUNIOR, Hermes. Cortes Supremas e Interpretação do direito. In: GALLOTTI, Isabel et al. *O papel da jurisprudência do STJ*. São Paulo: Revista dos Tribunais, 2014.