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**REVISITING THE SEPARATION OF POWERS IN BRAZIL:
parliamentary amendments to the annual budget law under the 1988 Constitution**

Belo Horizonte

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Natasha Burrell Ribeiro

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parliamentary amendments to the annual budget law under the 1988 Constitution**

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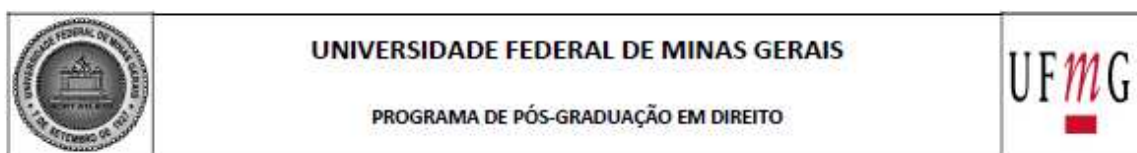
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challenge all the more so, and to the many
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Institutional designers always have some shared interest in the good performance of institutions and a partisan interest in the political advantage that institutions provide. These two logics of institutional choice tend to coexist at different levels of constitutional design¹.

¹ NEGRETTO, Gabriel L. **Making Constitutions**: Presidents, Parties and Institutional Choice in Latin America. Cambridge: Cambridge University Press, 2013. p. 7.

ABSTRACT

In Brazil, the budgetary process of the annual budget law comprises at least four stages: (i) formulation, in which the Executive prepares and submits the draft bill to the National Congress; (ii) deliberation and approval, during which Congress debates, amends, and enacts the budget; (iii) execution of the enacted budget, entrusted to the Executive; and (iv) oversight of budget execution, exercised primarily by Congress. Traditionally, parliamentary amendments introduced during the deliberative stage were treated as authorizations for expenditure, with execution remaining subject to executive discretion. In multiparty presidential systems such as Brazil's, this discretion has been regarded as an important instrument for coalition formation and maintenance. In 2007, however, Congress initiated a reform process that culminated, in 2019, in the consolidation of the regime known as the "mandatory budget" (*orçamento impositivo*). Under this arrangement, parliamentary amendments ceased to operate as mere authorizations for expenditure and came to bind executive action to a greater extent. The reforms were challenged before the Federal Supreme Court. Notably, direct action for the declaration of unconstitutionality No. 7.697/DF argues that the new budgetary regime is incompatible with the principle of separation of powers as established by the 1988 Constitution. Despite its prominence in contemporary political debate, the issue has received limited attention in the legal literature, leaving its central questions insufficiently explored. What is the normative content of the principle of separation of powers? What implications does it have for the structure and operation of the budgetary process of the annual budget law? And are the reforms consistent with those implications? This dissertation seeks to address these questions. It develops a normative account of the separation of powers grounded in the 1988 constitutional framework and, on that basis, articulates standards applicable to the budgetary process of the annual budget law. It then evaluates whether the reforms concerning the mandatory execution of parliamentary amendments are consistent with those standards. The analysis indicates that the reforms redefined the scope of executive discretion without displacing the Executive's budgetary authority. From this perspective, although the mandatory budget alters a longstanding feature of Brazilian presidentialism, it does not, in itself, violate the principle of separation of powers.

Keywords: separation of powers; institutional reform; budgetary process; parliamentary amendments; presidentialism.

RESUMO

No Brasil, o processo orçamentário da lei orçamentária anual compreende, ao menos, quatro etapas: (i) a formulação, em que o Poder Executivo elabora e encaminha o projeto de lei ao Congresso Nacional; (ii) a deliberação e aprovação, fase em que o Congresso debate, emenda e aprova o projeto; (iii) a execução do orçamento aprovado, atribuída ao Executivo; e (iv) o controle da execução orçamentária, exercido predominantemente pelo Congresso. A princípio, as emendas parlamentares apresentadas na etapa deliberativa funcionavam como autorizações de despesa, cuja execução permanecia sujeita à discricionariedade do Executivo. Em sistemas presidencialistas multipartidários como o brasileiro, essa margem de discricionariedade tem sido considerada uma importante ferramenta de formação e manutenção de coalizões governamentais. A partir de 2007, porém, o Congresso iniciou um processo de reformas que culminou, em 2019, na consolidação do regime conhecido como “orçamento impositivo”. Nesse arranjo, as emendas deixaram de operar como meras autorizações de despesa e passaram a vincular, em maior medida, a atuação do Executivo. A mudança tornou-se objeto de controle de constitucionalidade perante o Supremo Tribunal Federal. Nesse contexto, a Ação Direta de Inconstitucionalidade n. 7.697/DF sustenta a incompatibilidade do regime com o princípio da separação de poderes tal como estabelecido pela Constituição de 1988. Embora relevante no debate político nacional, essa controvérsia recebeu, até o momento, atenção limitada na literatura jurídica, de modo que seus aspectos centrais permanecem insuficientemente explorados. Qual é o conteúdo normativo do princípio da separação de poderes? Quais são as implicações desse conteúdo para a estrutura e o funcionamento do processo orçamentário da lei orçamentária anual? E as reformas são compatíveis com essas implicações? Esta dissertação busca enfrentar essas questões. Para tanto, apresenta uma concepção normativa da separação de poderes compatível com a Constituição de 1988 e, com base nela, identifica parâmetros aplicáveis ao processo orçamentário da lei orçamentária anual. Em seguida, avalia se as reformas que instituíram o orçamento impositivo são compatíveis com esses parâmetros. A análise indica que as reformas redefiniram o alcance da discricionariedade do Executivo, sem, contudo, comprometer sua autoridade orçamentária. Nessa perspectiva, embora o orçamento impositivo modifique um traço histórico do presidencialismo brasileiro, não implica, por si só, violação ao princípio da separação de poderes.

Palavras-chave: separação de poderes; reforma institucional; processo orçamentário; emendas parlamentares; presidencialismo.

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LIST OF ABBREVIATIONS AND ACRONYMS

ABNT	<i>Associação Brasileira de Normas Técnicas</i> [Brazilian Association of Technical Norms]
ACP	<i>Ação Civil Pública</i> [Public-interest Civil Action]
ADC	<i>Ação Declaratória de Constitucionalidade</i> [Action for Declaration of Constitutionality]
ADCT	<i>Atos das Disposições Constitucionais Transitórias</i> [Transitional Provisions of the 1988 Constitution]
ADI	<i>Ação Direta de Inconstitucionalidade</i> [Direct Action for the Declaration of Unconstitutionality]
ADO	<i>Ação Direta de Inconstitucionalidade por Omissão</i> [Direct Action of Unconstitutionality by Omission]
ADPF	<i>Arguição de Descumprimento de Preceito Fundamental</i> [Claim of Breach of Fundamental Precept]
AI / ArgInc	<i>Incidente de Arguição de Inconstitucionalidade</i> [Incident of Unconstitutionality]
ANC	<i>Assembleia Nacional Constituinte</i> [National Constituent Assembly]
AP	<i>Ação Popular</i> [Civil Suit]
ARENA	<i>Aliança Nacional Renovadora</i> [National Renewal Alliance]
CGU	<i>Controladoria-Geral da União</i> [Office of the Comptroller General]
CD	<i>Câmara dos Deputados</i> [Chamber of Deputies]
CMO	<i>Comissão Mista de Planos, Orçamentos Públicos e Fiscalização</i> [Joint Committee on Plans, Public Budgets, and Oversight]
CN	<i>Congresso Nacional</i> [National Congress]
Codevasf	<i>Companhia de Desenvolvimento dos Vales do São Francisco e do Parnaíba</i> [São Francisco and Parnaíba Valleys Development Company]

CPMF	<i>Contribuição Provisória sobre Movimentação ou Transmissão de Valores e de Créditos e Direitos de Natureza Financeira</i> [Provisional Contribution on the Operation or Transmission of Values, Credits and Rights of Financial Nature]
DP	<i>Defensoria Pública</i> [Public Defender's Office]
EC	<i>Emenda Constitucional</i> [Constitutional Amendment]
ICON-S	International Society of Public Law
LDO	<i>Lei de Diretrizes Orçamentárias</i> [Budget Guidelines Law]
LOA	<i>Lei Orçamentária Anual</i> [Annual Budget Law]
MDB	<i>Movimento Democrático Brasileiro</i> [Brazilian Democratic Movement]
MP	<i>Ministério Público</i> [Public Prosecutor's Office]
MI	<i>Mandado de Injunção</i> [Writ of Injunction]
MS	<i>Mandado de Segurança</i> [Writ of Mandamus]
PPA	<i>Plano Plurianual</i> [Multi-year Plan]
PPGD	<i>Programa de Pós-Graduação em Direito</i> [Graduate Program in Law]
Rcl	<i>Reclamação</i> [Constitutional Complaint]
RE / REExt	<i>Recurso Extraordinário</i> [Extraordinary Appeal]
RFB	<i>Receita Federal do Brasil</i> [Brazilian Federal Revenue Service]
RP	<i>Resultado Primário</i> [Primary Result]
SF	<i>Senado Federal</i> [Federal Senate]
SIAFI	<i>Sistema Integrado de Administração Financeira</i> [Integrated System of Federal Government Financial Administration]
STF	<i>Supremo Tribunal Federal</i> [Federal Supreme Court]
STJ	<i>Superior Tribunal de Justiça</i> [Superior Court of Justice]
TCU	<i>Tribunal de Contas da União</i> [Federal Court of Accounts]

TSE *Tribunal Superior Eleitoral* [Superior Electoral Court]

UFMG *Universidade Federal de Minas Gerais* [Federal University of Minas Gerais]

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I INTRODUCTION

While attending the 2024 Annual Conference of the International Society of Public Law (ICON-S), a visit to the *Museo del Prado* led to an encounter with Francisco de Goya's *Atropos or The Fates*. In this painting, Goya depicts three mythological figures whose distinct tasks — spinning, measuring, and cutting the thread of life — are jointly involved in the unfolding of a single destiny. These actions conventionally represent the cycle of existence common to all mortals: birth, the passage of time, and death².

Figure 1 – *Museo del Prado*, Madrid, Spain



Source: personal archive.

Figure 2 – *Atropos or The Fates*



² CILENTO, Angela Zamora. Considerations on Fate in the Iliad and the Remarkable Interventions of the Divine. *Religions*, Basel, v. 16, n. 5, e557, 2025. Available from: <https://doi.org/10.3390/rel16050557>. Accessed on: Jan 10, 2026.

Source: GOYA, Francisco de. *Atropos or The Fates*. Circa 1820-1823. Oil mural transferred to canvas; mixed technique on wall support. 123 x 266 cm. Mythological painting. Museo del Prado, Madrid. Inventory N.: P000757. Available from: <https://www.museodelprado.es/coleccion/obra-de-arte/las-parcas-atropos/8c8672a8-953e-4c00-9d49-c97fd1ed203f?searchMeta=las%20parcas>. Accessed on: Dec. 22, 2025.

Figure 3 – Clotho (the spinner), on the left; Lachesis (the measurer), in the center; Atropos (the cutter), on the right



Source: GOYA, Francisco de. *Atropos or The Fates*. Circa 1820-1823. Oil mural transferred to canvas; mixed technique on wall support. 123 x 266 cm. Mythological painting. Museo del Prado, Madrid. Inventory N.: P000757. Available from: <https://www.museodelprado.es/coleccion/obra-de-arte/las-parcas-atropos/8c8672a8-953e-4c00-9d49-c97fd1ed203f?searchMeta=las%20parcas>. Accessed on: Dec. 22, 2025.

Although such a reading may initially appear strained, these figures allow for a metaphorical account of the separation of powers within the governance process. Clotho, who spins the thread, reflects the creation of general norms and thus the legislative function. Lachesis, who measures its length, corresponds to the implementation of those norms, characteristic of the executive function. Atropos, who cuts the thread, represents the resolution of disputes arising from that implementation, which is the province of the judicial function.

The usefulness of this metaphor lies not in its explanatory completeness, but in its capacity to highlight the differentiation and sequencing of functions within a shared process. From a legal perspective, the separation of powers may be understood, much like the figures in Goya's painting, as imposing both a distinction and an ordered articulation of functions within a single course of action. As will become clearer in the course of this dissertation, these two elements — differentiation and sequencing — help explain how the separation of powers fulfills its normative purpose.

This understanding informs the approach adopted in this dissertation to examine whether the mandatory budget violates the separation of powers. Under the 1988 Brazilian Constitution, the separation of powers operates as a legally enforceable principle, expressly provided for in Articles 2 and 60, §4, III, and reinforced throughout the constitutional text,

particularly in Title IV, which organizes the branches of government. Accordingly, its application entails the existence of normative standards by which compliance can be assessed.

Yet the debate has not always been framed in these normative terms, as opposition to the mandatory budget appears to rely predominantly on empirical considerations. Such arguments reflect a widely shared understanding that Brazil's system of government depends, to a significant extent, on presidential control over budgetary resources to sustain legislative coalitions. In a context of heightened political polarization, the President may be less able to resist congressional allocations without jeopardizing legislative support, thereby constraining the Executive's policy agenda and, in more extreme scenarios, heightening the risk of impeachment.

These concerns, however, pertain primarily to the potential practical consequences of the institutional arrangement rather than to its normative compatibility with the separation of powers as established by the 1988 Constitution. Distinguishing between these dimensions allows for a more precise assessment of the issue. It leaves room for empirical considerations to inform the analysis, while recognizing that they do not, on their own, determine whether a given institutional arrangement complies with legal requirements. Against this background, the central contribution of this dissertation is to reframe the issue through a normative lens.

Before advancing to the manner in which this dissertation develops this reframing, a brief remark on the development of the argument is warranted. During the final examination of this work, the committee raised a number of questions that proved particularly valuable in clarifying both the scope and the limits of the argument. While it has not been possible to address all of these points in the present version, they have informed subsequent revisions and indicate directions for further development.

Among the issues raised that remain unaddressed are the following: whether the articulation of functions presupposes some form of balance; to what extent reductions in executive discretion are compatible with institutional stability; and, if such reductions result in imbalance, whether these would be legal or practical in nature. The committee also invited reflection on the role of case law and comparative analysis, particularly in relation to other Latin American countries; on the possibility of exploring standards specifically applicable to the deliberative stage of the budgetary process; and on the feasibility of maintaining a strict distinction between normative and non-normative accounts of the separation of powers.

In addition, several suggestions were made regarding the structure and presentation of the text. These included, in particular, the need, in Chapter II, to clarify the distinction between function and competence; to emphasize that institutional differentiation does not necessarily

entail political liberty; to adopt a more critical stance in engaging with Brazilian scholarship on the separation of powers, particularly where the analysis remains predominantly descriptive; and to reinforce the conclusions in Chapter V. Further recommendations concerned the overall concision of the text, the reduction of repetitions, the relocation of the tables in Chapter IV to an annex, and the avoidance of negative formulations.

These remarks are preserved here both as a record of the examination process and as a guide for the continued refinement of the argument, while also identifying questions, points of tension, and avenues for further development. With these considerations in view, the analysis that follows develops the normative framework through which the compatibility of the mandatory budget with the separation of powers is assessed.

I.1 RELEVANCE OF THE RESEARCH

In Brazil, the budgetary process of the annual budget law comprises at least four stages: (i) formulation, in which the Executive prepares and submits the draft bill to the National Congress; (ii) deliberation and approval, during which Congress debates, amends, and enacts the budget; (iii) execution of the enacted budget, entrusted to the Executive; and (iv) oversight of budget execution, exercised primarily by Congress.

Before the reforms examined in this dissertation, amendments introduced during the deliberative stage were not subject to mandatory execution. Instead, they functioned as non-binding spending authorizations, leaving the Executive with significant discretion over their implementation. This discretionary power played an important role in coalition-building, as presidents could deploy the execution of parliamentary amendments as a tool for securing and maintaining legislative support.

From 2007 onward, Congress pursued a gradual process of reform encompassing infralegal, statutory, and constitutional norms. This process culminated in 2019 with the consolidation of a mandatory regime for the execution of parliamentary amendments to the annual budget law (*orçamento impositivo*). As of 2020, amendments approved during the deliberative stage ceased to operate merely as authorizations and instead became legally binding obligations imposed on the Executive.

The consolidation of this reform coincided with the emergence of a major political controversy commonly referred to as the “secret budget” (*orçamento secreto*)³. This mechanism

³ For journalistic overviews of the “secret budget”, see PHILLIPS, Dom. Bolsonaro’s campaign relies on secret budget payoffs to win Brazil’s election. **The Guardian**, London, Oct. 22, 2022. Available from:

for the allocation of public funds gained prominence during Jair Bolsonaro's administration (2019–2022) and generated widespread concern regarding transparency and the integrity of the nationwide distribution of public resources.

Against this background, political parties and other relevant actors challenged before the Federal Supreme Court (*Supremo Tribunal Federal*, STF) not only the mechanisms associated with the secret budget⁴, but also the reforms that established the mandatory execution of parliamentary amendments⁵. In this context, direct action for the declaration of unconstitutionality (*Ação Direta de Inconstitucionalidade*, ADI) No. 7.697/DF, among others, sought the invalidation of these reforms on the grounds that they infringe the principle of separation of powers.

According to the petitioners, the new regime unduly constrains the Executive's authority over budgetary execution, allowing the Legislature to exercise direct influence over the definition and implementation of public policies⁶. By constraining presidential discretion in the conduct of public administration and reallocating to Congress substantive authority over public

<https://www.theguardian.com/world/2022/oct/27/bolsonaros-campaign-relies-on-secret-budget-payoffs-to-win-brazils-election>. Accessed on: Jan. 10, 2026. POOLER, Michael. Brazil's supreme court declares 'secret budget' unconstitutional. **Financial Times**, London, Dec. 19, 2022. Available from: <https://www.ft.com/content/0b130aa6-73ce-48ff-b627-a2f5a1780135>. Accessed on: Jan. 10, 2026.

⁴ The practices commonly referred to as the "secret budget" have been challenged before the STF primarily through Claims of Breach of Fundamental Precept (*Arguições de Descumprimento de Preceito Fundamental*, ADPFs) Nos. 850/DF, 851/DF, 854/DF, and 1.014/DF. For the publicly available materials in these proceedings, see BRASIL. Supremo Tribunal Federal. **Arguição de Descumprimento de Preceito Fundamental nº 850**. [Claim of Breach of Fundamental Precept No. 850]. Relator: Rosa Weber, 15 dez. 2022. Available from: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6193240>. Accessed on: Jan. 10, 2026; BRASIL. Supremo Tribunal Federal. **Arguição de Descumprimento de Preceito Fundamental nº 851**. [Claim of Breach of Fundamental Precept No. 851]. Relator: Rosa Weber. Federal District, 17 jun. 2021. Available from: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6194438>. Accessed on: Jan. 10, 2026; BRASIL. Supremo Tribunal Federal. **Arguição de Descumprimento de Preceito Fundamental nº 854**. [Claim of Breach of Fundamental Precept No. 854]. Relator: Flávio Dino, 29 dez. 2024. Available from: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6199750>. Accessed on: Jan. 10, 2026; BRASIL. Supremo Tribunal Federal. **Arguição de Descumprimento de Preceito Fundamental nº 1014**. [Claim of Breach of Fundamental Precept No. 1014]. Relator: Flávio Dino, 2022. Available from: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6492811>. Accessed on: Jan. 10, 2026.

⁵ The reforms that introduced the mandatory execution of parliamentary amendments have been challenged before the STF primarily through ADIs Nos. 7.688/DF, 7.695/DF, and 7.697/DF. For the publicly available materials in these proceedings, see BRASIL. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade nº 7.688/DF**. [Direct Action for the Declaration of Unconstitutionality No. 7.688/DF]. Relator: Flávio Dino, 15 set. 2025. Available from: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6987935>. Accessed on: Jan. 10, 2026; BRASIL. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade nº 7.695/DF**. [Direct Action for the Declaration of Unconstitutionality No. 7.695/DF]. Relator: Flávio Dino, 9 dez. 2024. Available from: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6996131>. Accessed on: Jan. 10, 2026; BRASIL. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade nº 7.697/DF**. [Direct Action for the Declaration of Unconstitutionality No. 7.697/DF]. Relator: Flávio Dino, 2024. Available from: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6997560>. Accessed on: Jan. 10, 2026.

⁶ BRASIL. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade nº 7.697/DF** [...], p. 6-20.

expenditures, this model would amount to a violation of the separation of powers as established by the 1988 Constitution.

At the time of writing, ADI No. 7.697/DF had not yet been definitively adjudicated. The STF will therefore be required to determine whether — and, if so, in what manner — the reforms violate the separation of powers as envisioned by the 1988 Constitution. Given the characteristics of Brazil’s constitutional review system, this decision may acquire precedential significance for future disputes concerning formal institutional reforms. For this reason, the question of whether the reforms violate the separation of powers warrants closer examination.

I.2 LITERATURE REVIEW AND RESEARCH QUESTIONS

Despite its prominence in public debate and media coverage in Brazil⁷, the mandatory budget has received limited attention in legal scholarship. This may be explained, at least in part, by the consolidation of the reforms in 2019 and subsequent developments. These include the sudden prominence of the so-called “secret budget” controversy in 2021–2022 and, from 2022 onward, the introduction of new modalities for the execution of parliamentary amendments, such as special transfers (*transferências especiais*).

Within this limited body of scholarship, even fewer studies approach the issue from a separation-of-powers perspective. One of the earliest analyses to do so is offered by Núbia Cristina Barbosa Santos and Carlos Eduardo Gasparini. In broad terms, they argue that Brazil’s budgetary model is grounded in a system of shared responsibility among the branches, embedded within a constitutional framework of checks and balances⁸. On their account, the 1988 Constitution delineates the role of each branch in the budgetary process: the President presents a budget proposal reflecting the policy agenda endorsed by the electorate, while Congress examines and adjusts it through amendments during the deliberative phase and, where

⁷ For examples of how these reforms have been discussed in Brazilian public debate and media coverage, see CALGARO, Fernanda; BARBIERI, Luiz Felipe; CLAVERY, Eduardo. Orçamento impositivo: entenda como funciona e o que está em análise pelo Congresso. **G1**, São Paulo, Mar. 2, 2020. Available from: <https://g1.globo.com/politica/noticia/2020/03/02/orcamento-impositivo-entenda-como-funciona-e-o-que-esta-em-analise-pelo-congresso.ghtml>. Accessed on: Jan. 10, 2026; MAIA, Flávia. STF: Orçamento impositivo de emendas da saúde é constitucional. **JOTA**, Brasília, Oct. 19, 2022. Available from: <https://www.jota.info/saude/stf-orcamento-impositivo-de-emendas-da-saude-e-constitucional>. Accessed on: Jan. 10, 2026; BARRETO, Kellen. Lula diz não ser contra emendas, mas critica “sequestro” do Orçamento pelo Congresso. **G1**, Brasília, Aug. 15, 2024. Available from: <https://g1.globo.com/politica/noticia/2024/08/15/lula-diz-nao-ser-contra-emendas-mas-critica-sequestro-do-orcamento-pelo-congresso.ghtml>. Accessed on: Jan. 10, 2026.

⁸ SANTOS, Núbia Cristina Barbosa; GASPARINI, Carlos Eduardo. Orçamento Impositivo e Relação entre Poderes no Brasil. **Revista Brasileira de Ciência Política**, Brasília, n. 31, p. 339–396, jan./abr. 2020. p. 380–381. Available from: <https://doi.org/10.1590/0103-335220203109>. Accessed on: May 3, 2024.

necessary, in the course of budget execution, with the process as a whole remaining subject to judicial review.

From this perspective, Santos and Gasparini maintain that the constitutional arrangement assigns distinct yet complementary functions to each branch. The amendments introduced in this context would not have substantially altered interbranch relations, insofar as they did not modify the constitutional allocation of competences. Rather, they may be understood as reflecting a shift in congressional behavior — characterized by reduced engagement with overarching budgetary choices and a greater emphasis on individual interests — without disrupting the institutional balance originally envisaged by the 1988 Constitution.

A more systematic and wide-ranging analysis of the reforms is offered by Rodrigo Oliveira de Faria, whose work serves as an important reference point for this dissertation. At the outset, Faria argues that political disputes over allocative primacy, as well as the occasional predominance of one branch over another in practice, do not, in themselves, compromise the integrity of the budgetary process, so long as the principle of separation of powers is preserved⁹. On this view, the process is undermined only when either the Executive or the Legislature encroaches upon functions constitutionally assigned to the other, thereby disturbing the functional balance of the allocative regime¹⁰.

Faria further situates these tensions within a comparative and historical perspective, emphasizing that periods of predominance by either branch are not unique to the Brazilian case. There are no universal models of interbranch relations in the budgetary process; rather, such arrangements vary according to specific historical and institutional contexts¹¹. Although the United States is often invoked as a paradigmatic example, its distinctive features — such as a consolidated two-party system and a highly decentralized Congress — limit the direct transposition of that experience to the Brazilian context¹².

Whereas Faria's analysis centers on the balance of power between the branches, Francisco Gilney Bezerra de Carvalho Ferreira approaches the issue from the standpoint of the legal nature of the budget itself. Ferreira argues that the public budget may be understood as a material law endowed with binding effects. If legislative participation is a defining feature of the lawmaking process, a similar logic, on this account, applies to budgetary legislation.

⁹ FARIA, Rodrigo Oliveira de. **Emendas parlamentares e processo orçamentário no presidencialismo de coalizão**. [Parliamentary amendments and the budgetary process in coalition presidentialism]. São Paulo: Blucher, 2023. p. 31.

¹⁰ *Ibid.*, p. 31 and 388.

¹¹ *Ibid.*, p. 242.

¹² *Ibid.*, p. 255.

From this perspective, the budget is difficult to reconcile with a purely authorizing conception, since a law — regardless of its subject matter — is not merely a recommendation or a statement of intent¹³. Once a budgetary law is enacted, it is therefore expected to guide executive action in the same manner as other legal norms. Otherwise, the requirement that the representative body express the political will of the people in decisions concerning the allocation of public resources would risk being deprived of practical significance, if compliance with what was approved by the Legislature were left entirely to executive discretion.

Building on this understanding, Ferreira further argues that whereas an authorizing budget tends to concentrate power at the execution phase, a mandatory budget shifts a significant portion of that power to the phases of formulation and deliberation¹⁴. Once the budget is conceived as binding, it can no longer be unilaterally adjusted by the Executive during execution, thereby requiring greater care at the moment of preparation. Mandatory budget execution would thus entail a concrete change in institutional behavior, directed not only at the execution stage but primarily at the formulation of the budget itself.

Related concerns are addressed in Paula Carolina de Oliveira Azevedo da Mata's doctoral thesis. Her work examines whether the development of criteria grounded in the notion of legislative rationality could enhance transparency regarding the purposes of parliamentary amendments¹⁵. Although Mata does not explicitly frame her analysis in terms of the separation of powers, she argues that the introduction of mandatory amendments calls for the creation of new procedures capable of ensuring their alignment with the primary purpose of the budget — the provision of public goods and services¹⁶. This reasoning appears to rest on an understanding according to which the Executive is better positioned to propose an efficient allocation of public resources.

The implications of these reforms have also been examined in an expert opinion submitted in the context of ADI No. 7.697/DF¹⁷. In that proceeding, Lenio Luiz Streck was

¹³ FERREIRA, Francisco Gilney Bezerra de Carvalho. **Orçamento impositivo no Brasil**: da ficção à realidade. [Mandatory budgeting in Brazil: from fiction to reality]. São Paulo: Blucher, 2024. p. 90.

¹⁴ *Ibid.*, p. 492.

¹⁵ MATA, Paula Carolina de Oliveira Azevedo da. **Devido processo legislativo orçamentário**: emendas parlamentares impositivas sob a perspectiva da racionalidade legislativa. [Budgetary legislative due process: mandatory parliamentary amendments from the perspective of legislative rationality]. 2025. Tese (Doutorado em Direito) – Programa de Pós-Graduação em Direito, Universidade Federal de Minas Gerais, Belo Horizonte, 2025. p. 19.

¹⁶ *Ibid.*, p. 243-247.

¹⁷ STRECK, Lenio Luiz. **Parecer**: consulta jurídica sobre a (in)constitucionalidade das emendas parlamentares impositivas — objeto da ADI n.º 7.697/DF. [Legal opinion: legal consultation on the (un)constitutionality of mandatory parliamentary amendments — the subject of Direct Action for the Declaration of Unconstitutionality (ADI) No. 7.697/DF.]. Porto Alegre: Streck & Trindade Advogados, 21 out. 2024. Available from:

asked to assess whether the changes introduced by Constitutional Amendments (*Emendas Constitucionais*, ECs) Nos. 86/2015, 100/2019, and 105/2019 are compatible with Article 2 of the 1988 Constitution. Given its direct engagement with the issue examined in this dissertation, the opinion is considered here alongside scholarly literature.

In his analysis, Streck concludes that the mandatory execution of parliamentary amendments to the annual budget law violates the principle of separation of powers by significantly constraining executive participation in the definition of discretionary expenditures. On this account, the Legislature would effectively assume control over the budgetary process, thereby undermining the system of checks and balances established by the original constituent power.

Although the works reviewed here offer valuable insights, they do not fully engage with what may be regarded as the core of the legal controversy. What is the normative content of the principle of separation of powers? What implications does it have for the structure and operation of the budgetary process of the annual budget law? And are the reforms consistent with those implications?

I.3 SCOPE AND STRUCTURE OF THE RESEARCH

Insofar as the questions identified above remain insufficiently examined, this dissertation seeks to contribute to their clarification. Chapter II addresses the first stage of the inquiry by examining how the principle of separation of powers is defined under Articles 2; 60, §4, III; and Title IV of the 1988 Constitution. Although these provisions confer legal force on the principle, the literature does not converge on a shared account of its normative content. To address this gap, Chapter II maps and systematizes the main interpretive approaches, with a view to identifying the analytical criteria that an account of the separation of powers must satisfy to be compatible with these provisions.

Building on this analysis, Chapter III advances a normative account of the separation of powers that satisfies these criteria. On this view, the separation of powers entails both the differentiation of governmental functions and their orderly articulation within the broader governance process. The chapter reconstructs the reasoning underlying this understanding and examines its normative implications. It then considers how these implications may be reflected

in — or translated into — the structure and operation of the budgetary process established by the 1988 Constitution.

Chapter IV turns to the infralegal, statutory, and constitutional reforms that culminated, in 2019, in the consolidation of the mandatory execution of parliamentary amendments. After reconstructing this trajectory, the chapter assesses whether the resulting institutional arrangements are consistent with the account developed in Chapter III, as applied to the budgetary process. Essentially, it argues that, despite the introduction of mandatory execution, the Executive retains significant formal discretion over budget implementation, which weighs against characterizing the reforms as a violation of the separation of powers.

Although this dissertation does not seek to provide a comprehensive account of Brazil's constitutional system, nor to engage in theory-building, it offers a focused analysis of the relationship between the Executive and Legislative branches within the budgetary process, with particular emphasis on parliamentary amendments to the annual budget law.

Among the research designs discussed in *Comparative Matters*, this approach most closely corresponds to a single-country study¹⁸. While not comparative in the conventional sense, this type of inquiry engages with ideal-type models and broader normative frameworks — such as the concept of separation of powers developed in liberal political theory — against which specific constitutional arrangements may be assessed. As Ran Hirschl observes, such studies are typically grounded in the author's familiarity with the legal system under examination and seek both to elucidate its internal logic and to contribute to a broader understanding of constitutionalism as a mode of governance.

The choice of language is intended to facilitate engagement with readers beyond the Brazilian context. Even where readers do not share the conclusions advanced in this dissertation, the references and sources assembled may still be useful for their own inquiries. This choice also reflects the internationalization efforts of the Graduate Program in Law at the Federal University of Minas Gerais (*Programa de Pós-Graduação em Direito da Universidade Federal de Minas Gerais*, PPGD/UFGM)¹⁹.

The adoption of the standards of the Brazilian Association of Technical Norms (*Associação Brasileira de Normas Técnicas*, ABNT) reflects a formal requirement of the

¹⁸ HIRSCHL, Ran. **Comparative matters**: the renaissance of comparative constitutional law. Oxford: Oxford University Press, 2014. p. 232–235.

¹⁹ UNIVERSIDADE FEDERAL DE MINAS GERAIS. Regulamento do PPGD UFGM 2024. [Regulation of the Graduate Program in Law]. **Programa de Pós-Graduação em Direito da UFGM**, Belo Horizonte, 2024. Article 77, Item IX. Available from: <https://pos.direito.ufmg.br/regulamento-ppgdufmg-2025/>. Accessed on: Jan. 10, 2026.

PPGD/UFGM²⁰. In addition, throughout the drafting process of this dissertation, ChatGPT was employed under the author's supervision and judgment, including for the revision and refinement of the text. Further details concerning other forms and purposes of this use are provided in the Appendix.

Finally, although the author, as a Brazilian and a native Portuguese speaker, has relied on the original text of the 1988 Constitution, readers who wish to consult the constitutional provisions cited throughout this work may refer to the *Constitute Project*²¹, which provides a reliable English translation.

²⁰ UNIVERSIDADE FEDERAL DE MINAS GERAIS. Biblioteca Universitária. **Diretrizes para normalização de trabalhos acadêmicos**. [Guidelines for the Standardization of Academic Papers]. 2. ed. Belo Horizonte: Biblioteca Universitária/UFGM, 2023. Available from: <https://pos.direito.ufmg.br/diretrizes-para-normalizacao-de-trabalhos-academicos/>. Accessed on: Jan. 10, 2026.

²¹ BRAZIL. Brazil 1988 (rev. 2017): subsequently amended [Constitution of the Federative Republic of Brazil 1988]. **Constitute**, [s. l.], [2017]. Available from: https://constituteproject.org/constitution/Brazil_2017. Accessed on: 5 dec. 2025.

II THE SEPARATION OF POWERS UNDER THE 1988 CONSTITUTION

The separation of powers has been extensively examined in political theory and legal scholarship. Addressing this topic in a master's dissertation, therefore, requires careful narrowing of scope, given the breadth and diversity of literature. In light of the questions outlined in the Introduction, this study focuses on authors who engage with the normative²² dimension of the principle and whose analyses are particularly useful for understanding the respective roles of the Executive and Legislative branches in the Brazilian budgetary process under the 1988 Constitution.

As a first step, Section II.1 situates the separation of powers in the 1988 Constitution, specifically Article 2, Article 60, §4, III, and Title IV. Few scholars have attempted to articulate the doctrine's essential features under these provisions, and they have reached different conclusions. Section II.1.1 identifies the main interpretive approaches and demonstrates that they do not converge into a single normative account of the principle, which, under Articles 2 and 60, §4, III, can be regarded as legally enforceable.

Section II.1.2 provides a preliminary effort to systematize these interpretive trends, noting that all of them conceive the doctrine as a safeguard that emerged within modern constitutionalism²³ to protect political liberty. Building on this premise, Section II.1.2 contends that these interpretations rest on two assumptions. First, the separation of powers serves a dual purpose, constraining political authority and structuring its legitimate exercise. Second, it has an intrinsic normative value, independent of checks and other related principles.

These assumptions correspond to those underlying Maurice John Crawley Vile's formulation, outlined in Section II.2. In its most abstract form, Vile's account holds that the preservation of political liberty requires dividing government into three distinct branches

²² Because the separation of powers is enshrined as a legal principle under the 1988 Constitution, the form of normativity at issue here is primarily that of law. The question of the normativity of law — what gives it the ability to bind action and how — has been debated since ancient Greece, providing not only different answers, but also divergent understandings of the problem itself. GIUDICE, Michael. **The Normativity of Law**. Cambridge: Cambridge University Press, 2024. p. 1-6. Available from: <https://www.cambridge.org/core/elements/abs/normativity-of-law/117EEA5D2AC30C0BCBF37E3D129A842C>. Accessed on: Jul. 15, 2025. For present purposes, however, adopting the general view that the normativity of law lies in its ability to provide subjects with reasons for action suffices. *Ibid.*

²³ In this dissertation, constitutionalism is understood as the idea that government must be legally constrained in the exercise of its powers, and its authority and legitimacy derive from faithful adherence to those constraints, a conception commonly associated with the political theories of John Locke and the constitutional thought of the founders of the American republic, cf. WALUCHOW, Wil; KYRITSIS, Dimitrios. Constitutionalism. In: ZALTA, Edward N.; NODELMAN, Uri (ed.). **The Stanford Encyclopedia of Philosophy**: Summer 2023 Edition. Stanford: Stanford University, 2023. Available from: <https://plato.stanford.edu/archives/sum2023/entries/constitutionalism/>. Accessed on: Jul. 23, 2025.

(legislative, executive, and judiciary), each corresponding to a specific and identifiable function. Each branch must confine itself to its own function and prevent encroachment upon the others. Moreover, the officials who compose these institutions should remain distinct, ensuring that no individual simultaneously exercises authority in more than one branch.

Although Vile's account proposes a coherent conceptual model, it provides limited guidance on how governmental functions should be exercised to safeguard political liberty. This limitation becomes more apparent when one considers that the maintenance of distinct branches, functions, and personnel, or, more broadly, the dispersion of authority among multiple political actors and institutions, is also found in authoritarian contexts. In this light, the separation of powers, as envisioned by modern constitutionalism, appears to involve more than institutional differentiation. Chapter III examines this issue, as framed by the analytical framework set out in Section II.3.

II.1 ARTICLE 2; ARTICLE 60, §4, III; AND TITLE IV

The inclusion of classical sources²⁴ in this section was suggested for two related reasons. First, those works inform the doctrine of the separation of powers that the provisions examined here seek to translate into positive law. Second, they have long served as a reference for Brazilian constitutional scholarship when interpreting those provisions, as will be discussed in the following section.

That suggestion is not pursued here, however, in light of three interrelated considerations. First, a review of Brazilian constitutional scholarship indicates that some of the difficulties examined in this study do not arise from fundamentally mistaken interpretations of the classical sources. Rather, they appear to be associated with an approach that prioritizes fidelity to the text over a more sustained engagement with its underlying assumptions and

²⁴ These works include, among others, HOBBS, Thomas. **Leviathan**. Edited by Richard Tuck. Rev. student ed. Cambridge: Cambridge University Press, 1996. (Cambridge Texts in the History of Political Thought); HOBBS, Thomas. **De cive, or, The citizen**. Edited with an introduction by Sterling P. Lamprecht. New York: Appleton-Century-Crofts, 1949. (Appleton-Century Philosophy Source-Books); LOCKE, John. **Two treatises of government**. Edited by Peter Laslett. Student ed. Cambridge: Cambridge University Press, 1988. (Cambridge Texts in the History of Political Thought); MONTESQUIEU, Charles de Secondat, Baron de. **The spirit of the laws**. Translated and edited by Anne M. Cohler; Basia Carolyn Miller; Harold Samuel Stone. Cambridge: Cambridge University Press, 1989. (Cambridge Texts in the History of Political Thought); HAMILTON, Alexander; MADISON, James; JAY, John. **The Federalist Papers**. Edited with an introduction and notes by Lawrence Goldman. Oxford: Oxford University Press, 2008 (Oxford World's Classics).

normative implications, while seeking to reconcile those readings with the provisions of the 1988 Constitution.

Second, there are alternative theoretical contributions that precisely emphasize those underlying assumptions and normative implications. The relevance of these contributions to the present study, therefore, lies not in their direct engagement with any Brazilian scholarship or the 1988 Constitution, but in their engagement with the same classical sources that informs the doctrine of the separation of powers and continue to frame constitutional interpretation in Brazil.

Third, engaging directly with the classical sources at the level of detail and scope they warrant would likely redirect the analysis in one of two directions: either toward a reassessment of Brazilian scholars' interpretations or toward a more sustained examination of the underlying assumptions and normative implications of the classical sources themselves. As previously stated, prevailing interpretations in Brazilian constitutional scholarship do not appear to be fundamentally mistaken, and the latter line of inquiry has been advanced through alternative theoretical contributions. These considerations do not diminish the value of either approach. They do suggest, however, that pursuing either in the present study would risk diverting the inquiry from its central purpose or unduly expanding its scope, without clearly indicating that this effort would provide analytical gains beyond those offered by the approach ultimately adopted here.

On this basis, and as a methodological decision, this inquiry takes the relevant constitutional provisions and the prevailing interpretations of Brazilian constitutional scholarship as starting points for advancing the discussion of the separation of powers under the 1988 Constitution, while remaining open to the possibility that a more direct engagement with the classical sources may, at a later stage, invite a reassessment of the analysis developed here. With the scope of the analysis defined, attention now turns to those provisions.

Article 2 establishes the legislative, executive, and judiciary as branches of the Union, “independent and harmonious among themselves”²⁵. Reinforcing its legal status, Article 60, §4, III classifies the separation of powers as an entrenched clause (*cláusula pétrea*), barring deliberation of any proposed amendment aimed at its abolition²⁶. Title IV of the 1988 Constitution, entitled “The Organization of Branches”, outlines the exercise of political

²⁵ BRASIL. [Constituição (1988)]. **Constituição da República Federativa do Brasil de 1988**. [Constitution of the Federative Republic of Brazil 1988]. Brasília, DF: Presidência da República, [2025]. Art. 2. Available from: http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm. Accessed on: Dec. 22, 2025.

²⁶ *Ibid*, art. 60, §4, III.

authority across four chapters. These chapters correspond to the three branches of government and to the Institutions Essential to Justice (*Funções Essenciais à Justiça*).

Chapter I addresses the legislative branch, detailing the structure, competences, and procedures of the Brazilian Congress (*Congresso Nacional, CN*), composed of the Chamber of Deputies (*Câmara dos Deputados, CD*) and the Senate (*Senado Federal, SF*), including their roles in fiscal, budgetary, and financial oversight²⁷.

Chapter II defines the structure of the executive branch, outlining the competences of the Brazilian President and Vice President, the competences of the Ministers (*Ministros de Estado*), and the composition and advisory roles of the Council of the Republic (*Conselho da República*) and the National Defense Council (*Conselho de Defesa Nacional*)²⁸.

Chapter III addresses the judiciary branch, specifying its structure, jurisdiction, and composition. It comprises the STF, the Superior Court of Justice (*Superior Tribunal de Justiça, STJ*), and a range of specialized and regional courts, including the courts of general jurisdiction (*Justiça Comum*), which cover the federal and state courts, and the courts of special jurisdiction (*Justiça Especializada*), which encompass the labor, electoral, and military courts²⁹.

Chapter IV focuses on the Institutions Essential to Justice, which include the Public Prosecutor's Office (*Ministério Público, MP*), the public and private legal advocacy, and the Public Defender's Office (*Defensoria Pública, DP*)³⁰. Although these institutions are not formally integrated into any of the branches of the Union, they are considered, as their designation suggests, indispensable to the administration of justice in Brazil.

Collectively, these provisions establish a complex institutional arrangement structured around exclusive competences, supplementary or overlapping competences, and checks and balances. Exclusive competences include, for instance, the Brazilian President's power to appoint Ministers³¹ and the Brazilian Congress's prerogative to determine the remuneration of Deputies and Senators³².

Supplementary or overlapping competences occur when the proper fulfillment of a given task or prerogative, i.e., its ability to achieve its intended purpose, depends on the exercise of another. For instance, appointments to the STF require presidential nomination and Senate confirmation³³, combining executive initiative with political oversight. Similarly, although the

²⁷ BRASIL. [Constituição (1988)]. **Constituição** [...], arts. 44 to 75.

²⁸ *Ibid.*, art. 76 to 91.

²⁹ *Ibid.*, arts. 92 to 126.

³⁰ *Ibid.*, arts. 127 to 135.

³¹ *Ibid.*, art. 84, I.

³² *Ibid.*, art. 49, VII.

³³ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 52, III, a.

Executive negotiates international treaties³⁴, their domestic legal status depends on congressional approval, either under Article 49, I, when they impose burdens or significant commitments on the national treasury, or under Article 5, §3, when they concern human rights³⁵.

Checks serve, among other purposes, to constrain arbitrariness and ensure accountability. Brazilian Congress may suspend executive decrees that exceed the scope of regulatory authority or the limits of legislative delegation³⁶ and summon Ministers to provide information³⁷. The Brazilian President, in turn, may introduce bills under the constitutional urgency procedure, which requires each house of Congress to consider the proposal within forty-five days and suspends all other legislative business if no action is taken by that deadline³⁸. The STF has the authority to adjudicate ADIs, challenging federal or state statutes or normative acts³⁹. Moreover, the Chamber of Deputies holds the power to authorize impeachment proceedings against the Brazilian President, Vice President, and Ministers⁴⁰, while the Senate is responsible for conducting the corresponding trial⁴¹.

Before turning to scholarly interpretations of this arrangement, two conceptual frameworks guiding this study must be established⁴². The first concerns the distinction between governmental functions and competences. The second clarifies the sense in which references to Title IV of the 1988 Constitution are employed throughout the analysis.

For the first conceptual framework, this dissertation conceives governmental functions as modes of exercising political authority, defined by the role they play within the broader governance process: legislative, executive, or judicial (adjudicative). Functions are understood at a higher level of abstraction, referring not to specific institutional acts, but to distinct modes of exercising authority.

³⁴ *Ibid.*, art. 84, VIII.

³⁵ BRASIL. Supremo Tribunal Federal. **Recurso Extraordinário [Extraordinary Appeal] n. 466.343/SP**. Relator: Cezar Peluso, 3 dez. 2008. Available from: <https://jurisprudencia.stf.jus.br/pages/search/sjur323/false>. Accessed on: Jul. 6, 2025.

³⁶ BRASIL, *op. cit.*, art. 49, V.

³⁷ *Ibid.*, art. 50.

³⁸ Except for proposals subject to constitutionally mandated deadlines, which remain unaffected by the suspension (*ibid.*, art. 64, §§1-2).

³⁹ *Ibid.*, art. 102, I, a.

⁴⁰ *Ibid.*, art. 51, I.

⁴¹ *Ibid.*, art. 52, I-II.

⁴² Although these conceptual frameworks draw inspiration from Vile's work, they ultimately depart from his account in both their aims and analytical orientation. The relevant discussion can be found in VILE, Maurice John Crawley. **Constitutionalism and the separation of powers**. 2nd ed. Indianapolis: Liberty Fund, 1998. [Originally published in 1967], especially at p. 17-18 and 346-384.

The exercise of these functions, in turn, is realized through institutional acts — more precisely, through prerogatives, powers, tasks, and obligations established by law. Based on the nature and purpose of a given competence, it is possible to infer the governmental function to which it corresponds. Each function is, therefore, implemented through a set of competences distributed across different institutions.

The judicial function, for instance, is exercised when the STF adjudicates, under its original jurisdiction, common criminal offenses committed by high authorities such as the Brazilian President⁴³; when it engages with constitutional review by ruling on ADIs⁴⁴; or when the STJ reviews decisions rendered by the Federal Regional Appellate Courts or the courts of the States, the Federal District, and the Territories, in cases where the contested ruling contradicts a treaty or law, or denies their applicability⁴⁵.

Thus, although the exercise of a competence entails the performance of a governmental function, the two notions are not, as a rule, synonyms. Throughout this dissertation — including the discussion of scholarly interpretations of Article 2; Article 60, §4, III; and Title IV — the term “function” refers to the legislative, executive, and judicial (or adjudicative) functions of government. By contrast, “competence” denotes the specific prerogatives, powers, tasks, and obligations established by law.

The second conceptual framework concerns the relationship between the separation of powers and other closely related principles, such as checks and balances, division of power, federalism, and bicameralism. This dissertation assumes that, although frequently linked, these principles are conceptually distinct.

Accordingly, references to Title IV aim to encompass only those aspects of its provisions relating to the separation of powers. An exhaustive identification of those aspects would not be feasible within the scope of this study. Title IV is, therefore, employed as a synecdoche, i.e., as a shorthand reference in which the whole stands for the relevant part. Specific provisions are explicitly identified when they are necessary to the argument.

II.1.1 Scholarly Approaches to Article 2; Article 60, §4, III; and Title IV

Although the inclusion of references on Article 2; Article 60, §4, III; and Title IV from sources beyond textbooks on Brazilian constitutional law was considered, these references tend

⁴³ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 102, I, b.

⁴⁴ *Ibid.*, art. 102, I, a.

⁴⁵ *Ibid.*, art. 105, III, a.

not to define the separation of powers in the more direct manner characteristic of that literature, instead assuming the concept to be self-evident⁴⁶. When this is not the case, they tend to rely on either the doctrinal formulations developed in these textbooks⁴⁷ or on closely related formulations⁴⁸.

In addition, these textbooks are often authored or edited by sitting Supreme Court justices, as well as by influential legal scholars and practitioners. They are also regularly updated to reflect prevailing institutional understandings of the doctrine in Brazil. Since this section aims to assess how the separation of powers is defined under the 1988 Constitution, this doctrinal literature appears to be a sufficiently appropriate source.

Reflecting on the provisions briefly presented in Section II.1, Paulo Bonavides observes that the contemporary conception of the separation of powers owes much to Chapter VI of *The*

⁴⁶ For examples of this approach, see VIEIRA, Oscar Vilhena. Supremocracia. [Supremocracy]. **Revista Direito GV**, São Paulo, v. 4, n. 2, p. 441-464, jul./dez. 2008. Available from: <https://www.scielo.br/j/rdgv/a/6vXvWwkg7XG9njd6XmBzYzQ/?format=pdf&lang=pt>. Accessed on: Dec. 30, 2025; FREITAS, Graça Maria Borges de; BUSTAMANTE, Thomas da Rosa de. Separação e equilíbrio de poderes: reflexões sobre democracia e desenho institucional do Supremo Tribunal Federal pós-1988: apontamentos a partir de um estudo de caso: ADPF 402-DF. [Separation and Balance of Powers: Reflections on Democracy and the Institutional Design of the Brazilian Supreme Federal Court after 1988: Notes from a Case Study: ADPF 402-DF]. **Cadernos Adenauer**, Rio de Janeiro, v. 18, n. 1, p. 193-216, 2017. Available from: <http://as1.trt3.jus.br/bd-trt3/handle/11103/39363>. Accessed on: Nov. 20, 2025; NUNES, Daniel Capecchi. A burocracia como guardiã da Constituição: democracia e separação de poderes no Estado administrativo. [Bureaucracy as the guardian of the Constitution: democracy and separation of powers in the administrative State]. **Revista de Direito Administrativo**, Rio de Janeiro, v. 282, n. 2, p. 189-214, maio/ago. 2023. Available from: <https://doi.org/10.12660/rda.v282.2023.89351>. Accessed on: Nov. 17, 2025; SOBREIRA, David; COUTINHO, Carlos Marden Cabral. Domestizando a Justiça. [Taming Justice]. **Revista de Investigações Constitucionais**, Curitiba, v. 10, n. 2, e242, maio/ago. 2023. Available from: <https://doi.org/10.5380/rinc.v10i2.89756>. Accessed on: Nov. 20, 2025; AMATO, Lucas Fucci; RIBEIRO, Rodrigo Marchetti. Controle judicial, interpretação jurídica e separação de poderes: o sincretismo do caminho brasileiro em perspectiva comparada. [Judicial review, legal interpretation and the separation of powers: the syncretism of the Brazilian path in comparative perspective]. **Suprema – Revista de Estudos Constitucionais**, Brasília, DF, v. 4, n. 2, p. 273-303, jul./dez. 2024. Available from: <https://doi.org/10.53798/suprema.2024.v4.n2.a383>. Accessed on: Nov. 20, 2025.

⁴⁷ For an example of this approach, see BIELSCHOWSKY, Raoni. O Poder Judiciário na doutrina da separação dos poderes : um quadro comparativo entre a ordem brasileira e a ordem portuguesa. [The Judiciary in the doctrine of the separation of powers: a comparative framework between the Brazilian and the Portuguese legal orders]. **Revista de Informação Legislativa**, Brasília, DF, v. 49, n. 195, p. 269-290, jul./set. 2012. Available from: <http://www2.senado.leg.br/bdsf/handle/id/496610>. Accessed on: Dec. 30, 2025.

⁴⁸ For examples of this approach, see GROHMANN, Luís Gustavo Mello. A separação de poderes em países presidencialistas: a América Latina em perspectiva comparada. [The separation of powers in presidentialist countries: Latin American in comparative perspective]. **Revista de Sociologia e Política**, Curitiba, n. 17, p. 75-106, nov. 2001. Available from: <https://doi.org/10.1590/S0104-44782001000200008>. Accessed on: Nov. 13, 2025; MENDES, Conrado Hübner. **Direitos fundamentais, separação de poderes e deliberação**. [Fundamental rights, separation of powers and deliberation]. 2008. Tese (Doutorado em Ciência Política) – Faculdade de Filosofia, Letras e Ciências Humanas, Universidade de São Paulo, São Paulo, 2008. Available from: <https://doi.org/10.11606/T.8.2008.tde-05122008-162952>. Accessed on: Dec. 30, 2025; PINHEIRO, Ivan Antônio; VIEIRA, Luciano José Martins; MOTTA, Paulo Cesar Delayti. Mandando Montesquieu às favas: o caso do não cumprimento dos preceitos constitucionais de independência dos três poderes da República. [Sending Montesquieu over the board: the case of non-conformity to the constitutional precepts of independence among the powers of the republic]. **Revista de Administração Pública**, Rio de Janeiro, v. 45, n. 6, p. 1733-1759, nov./dez. 2011. Available from: <https://doi.org/10.1590/S0034-76122011000600006>. Accessed on: Dec. 30, 2025.

*Spirit of the Laws*⁴⁹. According to Bonavides, it remains uncertain whether this theoretical construct originated from a misreading of the British Constitution or from what he regards as an imprecise observation about Britain's parliamentary system. In either case, this observation has been accepted as truth and ultimately became one of the most enduring guarantees of the rule of law⁵⁰.

Bonavides draws attention to Montesquieu's tripartite division of political authority into three distinct functions: (i) the legislative function; (ii) the executive function in matters of the law of nations, responsible for conducting foreign policy and overseeing defense and public security, which aligns with the modern executive function; (iii) the executive function in matters of civil law, responsible for punishing crimes and resolving disputes among citizens, which corresponds to the judicial function⁵¹.

For Bonavides, this model represents not merely a functional division of political power but also a fundamental safeguard for preserving political liberty. In his reading of Montesquieu, this liberty is not found in the arbitrary will of individuals, but in the tranquility and security of living under just and stable laws, ensured by the proper separation of governmental functions designed to prevent tyranny⁵².

Bonavides further identifies two competences that Montesquieu assigns solely to the legislative and executive branches: the "power to legislate" (*poder de estatuir*), referring to the creation, amendment, or repeal of legal norms, and the "power to prevent" (*poder de impedir*), inspired by the Roman tribunes and reinterpreted through British constitutionalism. He argues that the interplay of these two competences foreshadows the system of checks and balances⁵³.

José Afonso da Silva traces the origins of the separation of powers to Aristotle, noting that it was later elaborated by John Locke and Jean-Jacques Rousseau, who also articulated doctrines on the division of governmental functions. Silva observes that these doctrines were ultimately systematized by Montesquieu, found concrete expression in the constitutions of the former British colonies in North America, and assumed definitive form in the United States Constitution of 1787⁵⁴. The French Revolution elevated the separation of powers to the status of a constitutional dogma. This is reflected in Article 16 of the 1789 Declaration of the Rights

⁴⁹ BONAVIDES, Paulo. **Teoria geral do Estado**. [General theory of the State]. São Paulo: Malheiros Editores, 2010. p. 45.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, p. 290.

⁵² *Ibid.*, p. 291-292.

⁵³ *Ibid.*, p. 293-294.

⁵⁴ SILVA, José Afonso da. **Curso de Direito Constitucional Positivo**. [Positive constitutional law]. 39. ed. rev. e aum. São Paulo: Malheiros Editores, 2016. p. 111.

of Man and of the Citizen, which proclaims that any society failing to guarantee this principle cannot be considered to have a constitution.

Building on this historical trajectory, Silva explains that, from the advent of modern constitutionalism, the separation of powers has been understood to rest on two core notions. The first is functional specialization, under which each branch of government is assigned to a distinct role: the legislative bodies (such as Congress, chambers, or parliament) exercise legislative function, the executive exercises executive function, and the judiciary exercises judicial function⁵⁵. The second is organic independence, which requires that each branch enjoy genuine autonomy from the others, free from mechanisms of subordination. Taken together, he argues, these notions provide a juridical framework for the exercise of political authority.

Silva further emphasizes that the separation of powers has consistently been regarded as a cornerstone of the Brazilian constitutional order⁵⁶. Following Benjamin Constant's formulation, the Brazilian Constitution of 1824 adopted a quadripartite model, which comprised the moderating, legislative, executive, and judicial functions. Subsequent constitutions, however, embraced Montesquieu's tripartite conception. Within this model, political power — conceived as one, indivisible, and non-delegable — unfolds into the legislative, executive, and judicial functions⁵⁷.

As Silva explains, the legislative function consists of enacting general, abstract, and impersonal norms that introduce new elements into the legal order; these norms are, properly speaking, laws⁵⁸. He further observes that the executive function concerns concrete and individualized situations governed by the law. It goes beyond the execution of statutes to include the exercise of tasks and prerogatives, encompassing legal acts and facts that are not general or impersonal. Finally, he notes that the judicial function consists in applying the law to specific cases with a view to resolving disputes.

Interpreting Article 2 of the 1988 Constitution, particularly the provision describing the branches of government as “independent and harmonious among themselves”, Silva distinguishes between independence and harmony⁵⁹. For independence, he identifies three dimensions. First, the appointment and tenure of public officials within each branch are not contingent upon the confidence or approval of the others⁶⁰. Second, the exercise of political

⁵⁵ SILVA, José Afonso da. *Curso* [...]. p. 111.

⁵⁶ *Ibid.*, p. 108.

⁵⁷ *Ibid.*, p. 110.

⁵⁸ *Ibid.*

⁵⁹ SILVA, José Afonso da. *Curso* [...], p. 111-112.

⁶⁰ *Ibid.*

authority by each branch is not subject to prior consultation with or authorization by the remaining branches⁶¹. Third, each branch has autonomy to organize its internal operations, subject only to the limits established by law. He illustrates this autonomy with the Brazilian President's authority to create or abolish federal administrative positions and appoint or dismiss their occupants. He notes that the Brazilian Congress and the courts also manage their own administrative structures, including decisions on appointments and dismissals. Both the Legislative and Judiciary branches are empowered to adopt internal rules governing their institutional functioning, organization, leadership, and disciplinary measures.

Silva explains that harmony is expressed primarily through adherence to norms of courtesy in mutual relations and respect for the competences assigned to each branch⁶². He emphasizes, however, that neither the separation of powers nor the independence of the branches is absolute. In his view, instances of mutual interference are indispensable to maintaining a system of checks, which he considers essential for ensuring the balance required to achieve the common good and preventing arbitrariness or abuse by one branch to the detriment of another, and, above all, of those governed⁶³.

According to Lenio Luiz Streck and Fábio de Oliveira, although Aristotle, Locke, and Montesquieu are often cited as important contributors to the doctrine of the separation of powers, the idea of dividing the State's structure and functions finds its most concrete roots in seventeenth-century Britain, where it became intrinsic to the emergence of the rule of law⁶⁴. They explain that the concept was developed amid struggles between the monarchy and Parliament, beginning under James I (1603–1625) and continuing into the reign of William of Orange (1689–1702), during which the Bill of Rights (1689) was enacted.

In this sense, Streck and Oliveira argue that the separation of powers emerged in response to absolute and unchecked authority, designed to curb arbitrariness, impose limits on political power, and safeguard liberty⁶⁵. From the outset, they observe that the division of functions placed the judiciary at the center of debate precisely to prevent judges from being conflated with either the ruler or the legislator. In their view, the very logic of the principle rested on the conviction that the protection of liberty, rights, equality, and social stability required a judiciary institutionally distinct from both the executive and legislative authorities.

⁶¹ *Ibid.*

⁶² *Ibid.*, p. 112.

⁶³ *Ibid.*

⁶⁴ STRECK, Lenio Luiz; OLIVEIRA, Fábio de. Comentário ao artigo 2º. [Commentary on Article 2]. In: CANOTILHO, Joaquim José Gomes *et al.* (coord.). **Comentários à constituição do Brasil**. [Commentaries on the Constitution of Brazil]. 2. ed. São Paulo: SaraivaJur; Coimbra: Almedina; Brasília, DF: IDP, 2018. p. 319.

⁶⁵ *Ibid.*, p. 319-320.

For Streck and Oliveira, the guiding idea behind the separation of powers lies in the preservation of discretionary spheres, ensuring that each branch does not encroach upon the domain of discretion belonging to another⁶⁶. They contend that this boundary defines the equilibrium of the constitutional order. In their account, the separation of powers ensures that power controls power through the system of checks and balances.

Streck and Oliveira also emphasize that the very notion of power carries two distinct meanings. In an organic or subjective sense, it designates the branches of government as executive, legislative, and judiciary⁶⁷. In a functional or objective sense, it refers to the nature of the competences they exercise as executive or administrative, legislative or normative, and judicial. Therefore, political power itself is not divided, which they regard as one and indivisible, but the functions derived from it. They further note that the familiar tripartite functional scheme does not always correspond to a strict three-branch structure. In practice, many constitutions adopt quadripartite or even five-part models, often establishing constitutional courts that, despite exercising judicial review, are not formally part of the judiciary.

Finally, Streck and Oliveira emphasize that no branch exercises only the competences derived from its core function. They distinguish between typical and atypical competences. Typical competences are those that correspond to each branch's core function. For example, the authority to enact supplementary laws is a competence of the legislative branch that derives from its legislative function⁶⁸. Atypical competences, by contrast, do not correspond to a branch's core function. They are exercised either to enable the branch to carry out its core function or to undertake activities ordinarily associated with another branch. Thus, the judiciary exercises an atypical competence related to the executive function when appointing its own officials, while the executive function intervenes in the legislative function when issuing provisional measures.

Alexandre de Moraes states that the separation of powers was first outlined by Aristotle in *Politics*, later developed by John Locke in the *Second Treatise of Civil Government*, and ultimately systematized by Montesquieu in *The Spirit of the Laws*⁶⁹. In Moraes' account, Montesquieu's formulation elevated the separation of powers into a defining principle of liberal

⁶⁶ STRECK, Lenio Luiz; OLIVEIRA, Fábio de. Comentário ao artigo 2º [...], p. 325-326.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ MORAES, Alexandre de. **Direito constitucional**. [Constitutional law]. 36. ed. rev. e aum. São Paulo: Atlas, 2020. p. 827.

constitutionalism, as reflected in Article 16 of the French Declaration of the Rights of Man and of the Citizen of 1789.

Drawing on Rousseau, Moraes emphasizes that political power is indivisible. What liberal political theory describes as the separation of powers is, therefore, from the perspective of modern constitutionalism, more accurately understood as the division of State functions among distinct and autonomous bodies⁷⁰. He notes that this division originally aimed to safeguard individual liberty against the arbitrariness of an all-powerful ruler.

Moraes further observes that, although constitutional law continues to uphold the tripartite model, a rigid application of this structure has become increasingly inadequate for the contemporary State, which has assumed broad responsibilities in promoting fundamental rights⁷¹. In this context, he maintains that the separation of functions must be interpreted within a system of reciprocal controls, namely, checks and balances.

Moraes also notes that, while Article 2 of the 1988 Constitution reaffirms the tripartite model, each branch performs additional tasks expressly provided in the constitutional text⁷². To explain this, he distinguishes between typical competences, which pertain to a branch's core function, and atypical competences, which are exercised in a supplementary or exceptional capacity.

For instance, Moraes identifies the typical competences of the legislative branch as lawmaking and the oversight of the Executive's accounting, financial, budgetary, operational, and patrimonial management⁷³. Its atypical competences include administrative tasks, such as organizing its internal structure, filling positions, and managing staff promotions, as well as adjudicative tasks, such as trying the Brazilian President for impeachable offenses.

Moraes concludes that, although the 1988 Constitution adopted the classical conception of the separation of powers, the institutional design it establishes recognizes both typical and atypical competences across all branches⁷⁴. For this reason, he argues that exclusivity in the exercise of governmental functions does not fully apply within the Brazilian constitutional order.

Bernardo Gonçalves Fernandes traces the origins of the separation of powers to Aristotle, who recognized the necessity of dividing the functions of the *polis*, particularly those

⁷⁰ MORAES, Alexandre de. **Direito** [...], p. 833.

⁷¹ *Ibid.*

⁷² *Ibid.*, p. 836.

⁷³ *Ibid.*

⁷⁴ *Ibid.*, p. 922.

of governing and adjudicating disputes within the community⁷⁵. In Fernandes's interpretation, Montesquieu reformulated this idea into the principle that governmental functions should remain interconnected while preserving the autonomy and independence of each branch, thereby giving rise to the doctrine of checks and balances.

Fernandes explains that, under this model, the three branches (executive, legislative, and judiciary) are assigned not only to their typical competences, which derive from each branch's core function, but also to atypical competences defined by constitutional design⁷⁶. This arrangement enables each branch to oversee the other, thereby helping to prevent abuse of authority. The underlying premise, he emphasizes, is that only power can restrain power. Each branch must perform its essential tasks while ensuring that the others operate within legal boundaries.

For Fernandes, the separation of powers aims to prevent the concentration and despotic exercise of authority⁷⁷. In this sense, the principle operates as a guarantee of liberty. Unchecked power, he argues, inevitably degenerates into arbitrariness, placing freedom at risk. This reasoning explains the central role of checks and balances, through which power is maintained within bounds by power itself.

Drawing on José Joaquim Gomes Canotilho, Fernandes further claims that the separation of powers has both positive and negative dimensions. The positive dimension concerns the organization and structure of the branches of government, defining their composition and competences⁷⁸. The negative dimension involves mechanisms of reciprocal oversight designed to prevent undue interference and preserve balance among them⁷⁹.

⁷⁵ FERNANDES, Bernardo Gonçalves. **Curso de Direito Constitucional**. [Course on constitutional law]. 13. ed. rev. e aum. Salvador: Juspodivm, 2021. p. 342-343.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ This formulation presents certain interpretive challenges. In legal doctrine, the notion of a "negative dimension" is typically associated with duties of abstention. This notion, however, does not correspond neatly to institutional arrangements usually associated with checks, which often entail not only affirmative action, but also the exercise of atypical competences. This can be observed, for instance, in the case of broadcasting concessions in Brazil. Although these concessions are generally granted by the executive without prior legislative authorization, under the 1988 Constitution, Congress retains the authority to approve them. This arrangement reflects the fact that, during the 1964–1985 dictatorship, the Executive frequently used its powers to control and censor radio and television in an effort to shape public discourse and legitimize the regime, *cf.* INTERVOZES. History. **Media Ownership Monitor Brazil 2017**, São Paulo, 29 nov. 2017. Available from: <https://brazil.mom-gmr.org/en/context/history/>. Accessed on: Dec. 22, 2025; RIBKE, Nahuel. Decoding television censorship during the last Brazilian military regime. **Media History**, London, v. 17, n. 1, p. 49-61, 2011. DOI: 10.1080/13688804.2011.532378. Available from: <https://doi.org/10.1080/13688804.2011.532378>. Accessed on: Dec. 19, 2025. In this light, Cass Sunstein's approach may capture more accurately the so-called negative dimension of the separation of powers. Summarizing Sunstein's account, the separation of powers entails a prohibition on each branch exercising functions constitutionally assigned to another, *cf.* SUNSTEIN, Cass R. The

Building on this dual perspective, Fernandes articulates the principle along three axes. Functional specialization recognizes that each branch exercises not only its typical competences but also atypical ones when necessary. Prohibition of usurpation of power safeguards institutional autonomy. Reciprocal oversight, inherent in the system of checks and balances, ensures the mutual restraint and stability of the constitutional order⁸⁰.

In this sense, Fernandes argues that the executive branch is typically responsible for directing the State, the government, and the public administration, while also exercising atypical competences of a legislative nature, such as issuing provisional measures and delegated laws, and of a judicial nature, such as adjudicating disputes in the administrative sphere⁸¹. The legislative branch has lawmaking and oversight as its typical competences, but also performs atypical competences, including executive responsibilities (organizing its internal structure, appointing officials, managing staff) and judicial responsibilities (trying the Brazilian President, Ministers, and members of the STF in impeachment proceedings). The judiciary branch is mainly responsible for adjudication, but also exercises atypical competences of a legislative nature, such as drafting its internal rules, and of an executive nature, such as granting leave to judges and court officials.

Virgílio Afonso da Silva notes that Brazilian constitutional scholarship has traditionally assigned an abstract meaning to the expression “separation of powers”, making references to Montesquieu almost obligatory⁸². Yet, Silva argues that Montesquieu’s work contributes little, if anything, to understanding the separation of powers as a division into three distinct governmental functions. Although Montesquieu advocated for the diffusion of power, he did so within the framework later described as a mixed constitution. According to Silva, this tradition is more clearly rooted in Polybius. In his view, Montesquieu never developed a normative theory of the separation of powers. He further argues that repetitive and uncritical use of a functional notion of the separation of powers — conceived as three governmental functions carried out by branches bearing the same names — lies at the root of a common conceptual confusion⁸³. This confusion is most evident in the classification of competences as typical or atypical. For Silva, this distinction is not based on any clearly identifiable criterion and has no role in interpreting the 1988 Constitution.

separation of powers is a they, not an it. *Harvard Journal of Law & Public Policy*, [s. l.], v. 48, p. 149–179, 2025. Available from: <http://dx.doi.org/10.2139/ssrn.4850425>. Accessed on: Dec. 19, 2025.

⁸⁰ FERNANDES, Bernardo Gonçalves. *Curso* [...], p. 342-343.

⁸¹ *Ibid.*, p. 345.

⁸² SILVA, Virgílio Afonso da. *Direito Constitucional Brasileiro*. [Brazilian constitutional law]. São Paulo: Edusp, 2021. p. 88-89.

⁸³ *Ibid.*

Silva observes that, in theory, the distinction between typical and atypical competences could be understood as a reference to an ideal model of the separation of powers⁸⁴. Typical competences would be those that, in practice, conform to the model, while atypical ones would be those that depart from it. In reality, however, the distinction usually reflects a contrast between known competences and those that are still unfamiliar. Thus, he concludes that the distinction is conceptually irrelevant.

According to Silva, adopting the tripartite division of powers was the fundamental political decision of the 1988 Constitution in this domain⁸⁵. Established in Article 2 and further detailed throughout the constitutional text, particularly in Title IV, this arrangement does not represent an idealized model; rather, it is a practical institutional design that balances exclusive competences with overlapping ones and reciprocal controls.

Within this framework, Silva argues that there is nothing “atypical” about assigning the judiciary responsibility for organizing elections, granting the legislative investigative powers, giving the executive a central role in the lawmaking process, or entrusting all three branches with a shared competence, such as the constitutional review of legislation⁸⁶. For this reason, he contends that, rather than engaging in abstract discussions about a conception of the separation of powers detached from the 1988 Constitution, the concept should be examined through the provisions of Title IV itself, as it permeates the constitutional order.

Considered together, these interpretations illustrate the range of approaches to the separation of powers within Brazilian constitutional thought. Although they refer to Article 2; Article 60, §4, III; and Title IV of the 1988 Constitution, they advance different understandings of the principle and its roles within the Brazilian constitutional order. In other words, they do not constitute a single normative account of a principle that, under these very provisions, carries legal implications. The following discussion, therefore, provides a preliminary effort to systematize these approaches, identifying the analytical guidelines necessary to ensure that the argument developed in this dissertation remains consistent with the constitutional provisions from which it departs.

II.1.2 A Preliminary Attempt to Systematize Existing Approaches

⁸⁴ SILVA, Virgílio Afonso da. **Direito** [...], p. 88-89.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

Although the 1988 Constitution appears to address a range of principles governing the exercise of political authority — including bicameralism, federalism, division of power, and checks and balances —, the literature on Article 2; Article 60, §4, III; and Title IV tends to discuss the separation of powers primarily associated with checks, while setting aside the other principles in this context.

In this sense, it often implicitly recognizes a conceptual distinction between the separation of powers and checks. Broadly speaking, the former refers to the idea that political authority is exercised through three distinct governmental functions (legislative, executive, and judicial), each entrusted to an autonomous branch. The latter, by contrast, denotes institutional mechanisms of mutual oversight designed to restrain arbitrariness and promote accountability among them.

Bonavides illustrates this distinction by describing Montesquieu’s tripartite division of power as the legislative function, the executive function regarding law of nations (the modern executive), and the executive function concerning civil law (the judiciary)⁸⁷. He traces the origin of checks and balances in two competences that Montesquieu assigns solely to the legislative and executive branches: the power to legislate, referring to the creation, amendment, or repeal of legal norms, and the power to prevent, inspired by the Roman tribunes and reinterpreted through British constitutionalism.

Silva locates both principles in Article 2 of the 1988 Constitution, but in distinct parts of the provision. The separation of powers is in the clause establishing the legislative, executive, and judiciary as independent branches of the Union, while checks and balances are in the clause requiring these branches to remain “harmonious among themselves”⁸⁸. He notes that this harmony depends not only on institutional courtesies but also on reciprocal oversight, which is essential to preserving balance, safeguarding the common good, and preventing arbitrary or abusive conduct, particularly to the detriment of the governed.

Streck and Oliveira argue that the separation of powers emerged in response to absolute and unchecked authority⁸⁹. From the outset, the division of governmental functions aimed to prevent judges from being conflated with either the ruler or the legislator. Therefore, the very logic of this arrangement rested on the conviction that the protection of liberty, rights, equality, and social stability requires a judiciary institutionally distinct from both executive and legislative authorities. Checks and balances, in turn, operate as an additional mechanism to

⁸⁷ BONAVIDES, Paulo. **Teoria** [...], p. 293-294.

⁸⁸ SILVA, José Afonso da. **Curso** [...], p. 111-112.

⁸⁹ STRECK, Lenio Luiz; OLIVEIRA, Fábio de. Comentário ao artigo 2º [...], p. 319-320.

safeguard the separation of powers when the authorities themselves fail or refuse to uphold it, ensuring that power is restrained by power through reciprocal institutional constraints⁹⁰.

For Moraes, checks and balances serve as a mechanism for reconciling the formal conception of the separation of powers with the contemporary requirement of interbranch coordination in promoting fundamental rights⁹¹. From this perspective, the two notions are not synonyms. The separation of powers establishes functional division among the branches, while checks and balances operate within this framework, tempering its rigidity and reshaping it to current constitutional demands.

Conversely, Bernardo Gonçalves Fernandes and Virgílio Afonso da Silva present a less pronounced distinction. Fernandes conceives checks as an expression of the negative dimension of the separation of powers⁹², whereas Silva considers the separation of powers with the institutional arrangement set out in Title IV, without drawing a clear distinction from checks⁹³.

These divergences in the interpretation of Article 2; Article 60, §4, III; and Title IV of the 1988 Constitution — along with the prevailing view that the separation of powers and checks and balances are distinct in theory and practice — suggest that each principle carries its own normative implications. Further developing this distinction could help clarify the Brazilian constitutional design and foster a more coherent understanding of the legitimate exercise of political authority within its jurisdiction.

In addition, while broadly recognizing the conceptual distinction between separation of powers and checks and balances, the literature commonly organizes the competences set out in Title IV along two intersecting dimensions. They may be typical or atypical, and they may be grounded in either the separation of powers or the checks and balances. Thus, four analytical categories can be delineated: (i) typical competences grounded in the separation of powers; (ii) typical competences grounded in checks and balances; (iii) atypical competences grounded in the separation of powers; and (iv) atypical competences grounded in checks and balances.

Before detailing these categories, two clarifications are in order. First, the proposed categorization serves as an analytical tool for the argument developed in the following chapters, rather than as an exhaustive or definitive account of the competences set out in Title IV. As previously noted, the principle of the separation of powers does not appear sufficient to account for all the prerogatives, powers, tasks, and obligations allocated there. Thus, the framework

⁹⁰ STRECK, Lenio Luiz; OLIVEIRA, Fábio de. Comentário ao artigo 2º [...], p. 325-326.

⁹¹ MORAES, Alexandre de. **Direito** [...], p. 827.

⁹² FERNANDES, Bernardo Gonçalves. **Curso** [...], p. 342-343.

⁹³ SILVA, Virgílio Afonso da. **Direito** [...], p. 88-89.

outlined here seeks to identify those types of competences most closely related to that principle. To this end, the categorization builds on classificatory patterns found in the existing literature, while remaining open to revision and alternative interpretations.

Second, although the distinction between typical and atypical competences is widely employed, the literature on Article 2, Article 60, §4, III, and Title IV, rarely makes its historical or theoretical foundations explicit. Even so, its underlying logic can be reconstructed based on the distinction applied in practice.

Typical competences are generally understood as those that derive from the core function of the branch that exercises them. For instance, the Brazilian President's power, as the head of the executive, to appoint and dismiss Ministers derives directly from the executive function⁹⁴.

Atypical competences, by contrast, arise from functions other than the core function of the branch that exercises them. These competences are conferred for specific institutional purposes, either to safeguard the autonomy of that branch or to enable mechanisms of interbranch restraint and accountability. For instance, the Brazilian President's competence, as the head of the executive, to issue decrees regulating the organization and operation of the federal administration derives from the legislative function and serves to preserve the executive's institutional autonomy⁹⁵.

Building on these initial clarifications, typical competences grounded in the separation of powers are exercised in a linear sequence. The legislative function comes first, followed by the executive function, and finally the judicial function. In practical terms, this sequence takes the following form: the legislature enacts legislation, the executive implements it, and the judiciary resolves disputes arising from this implementation.

The creation and collection of the Provisional Contribution on the Operation or Transmission of Values, Credits and Rights of Financial Nature (*Contribuição Provisória sobre Movimentação ou Transmissão de Valores e de Créditos e Direitos de Natureza Financeira*, CPMF) exemplifies this framework. The Brazilian Congress introduced the CPMF through Law No. 9.311/1996 as a temporary levy, which remained in force from January 1997 to December 2007⁹⁶. During this period, the Executive, acting through the Federal Revenue

⁹⁴ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 84, I.

⁹⁵ *Ibid.*, art. 84, IV and VI.

⁹⁶ BRASIL. Lei nº 9.311, de 24 de outubro de 1996. Institui a Contribuição Provisória sobre Movimentação ou Transmissão de Valores e de Créditos e Direitos de Natureza Financeira - CPMF, e dá outras providências. [Law No 9.311, of October 24, 1996: institutes the Contribution on the Operation or Transmission of Values, Credits and Rights of Financial Nature (CPMF)]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 134, n. 208, p.

Service (*Receita Federal do Brasil, RFB*), was responsible for collecting the CPMF, raising approximately R\$223 billion for the public treasury⁹⁷. As commonly occurs in taxation, disputes related to the CPMF reached the courts, either when the Executive pursued unpaid liabilities through enforcement actions or when taxpayers challenged alleged overpayments in refund suits⁹⁸. In these cases, the judiciary settles the controversies arising from the tax's enforcement.

Within this framework, judicial activity focuses on concrete cases in which courts may also exercise diffuse or incidental constitutional review, most commonly through the incident of unconstitutionality (*Incidente de Arguição de Inconstitucionalidade, ArgInc or AI*)⁹⁹ or the extraordinary appeal (*Recurso Extraordinário, RE or RExt*)¹⁰⁰. Judicial activity under the separation of powers further includes the adjudication of constitutional actions (*ações constitucionais*), such as habeas corpus¹⁰¹, habeas data¹⁰², the writ of mandamus (*Mandado de*

21877, 25 out. 1996. Available from: https://www.planalto.gov.br/ccivil_03/leis/19311.htm. Accessed on: Dec. 22, 2025.

⁹⁷ CPMF: O imposto defendido por FH, Lula e Dilma, que pode voltar sob Bolsonaro. [CPMF: The tax supported by FHC, Lula, and Dilma that could return under Bolsonaro]. *O Globo*, Rio de Janeiro, 15 set. 2015. Available from: <https://acervo.oglobo.globo.com/em-destaque/cpmf-imposto-defendido-por-fh-lula-dilma-que-pode-voltar-sob-bolsonaro-17495066>. Accessed on: Dec. 22, 2025.

⁹⁸ BECK, Martha. Mesmo após extinção, CPMF rendeu R\$ 1,7 bi ao governo. [Even after its abolition, the CPMF generated R\$ 1.7 billion in revenue for the government]. *O Globo*, Rio de Janeiro, 25 mar. 2012. Available from: <https://oglobo.globo.com/economia/mesmo-apos-extincao-cpmf-rendeu-17-bi-ao-governo-4411729>. Accessed on: Dec. 22, 2025.

⁹⁹ BRASIL. Lei nº 13.105, de 16 de março de 2015. Código de Processo Civil. [Law No 13.105 of March 16, 2015. Civil Procedure Code]. *Diário Oficial da União*: seção 1, Brasília, DF, ano 152, n. 51, p. 1-51, 17 mar. 2015. Art. 948 *et seq.* Available from: <https://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=17/03/2015&jornal=1&pagina=51&totalArquivos=128>. Accessed on: Dec. 22, 2025. For a doctrinal perspective, see DIDIER JR., Fredie; CUNHA, Leonardo Carneiro da. **Curso de direito processual civil: meios de impugnação às decisões judiciais e processo nos tribunais**. [Treatise of civil procedural law: means of challenging judicial decisions and proceedings before courts]. 13. ed. rev. Salvador: JusPodivm, 2016. (v. 3, p. 71-79).

¹⁰⁰ BRASIL. [Constituição (1988)]. *Constituição* [...], art. 102, III, “a”. For a doctrinal perspective, see DIDIER JR., Fredie; CUNHA, Leonardo Carneiro da. **Curso de direito processual civil: meios de impugnação às decisões judiciais e processo nos tribunais**. [Treatise of civil procedural law: means of challenging judicial decisions and proceedings before courts]. 13. ed. rev. Salvador: JusPodivm, 2016. (v. 3, p. 353-375).

¹⁰¹ BRASIL. [Constituição (1988)]. *Constituição* [...], art. 5, LXVIII; BRASIL. Decreto-Lei nº 3.689, de 3 de outubro de 1941. Código de Processo Penal. [Decree-Law No. 3,689 of October 3, 1941. Code of Criminal Procedure]. *Diário Oficial da União*: seção 1, Rio de Janeiro, p. 19699, 13 out. 1941. Articles 647 to 667. Available from: https://www.planalto.gov.br/ccivil_03/decreto-lei/del3689.htm. Accessed on: Dec. 22, 2025. For a doctrinal perspective, see ABBOUD, Georges. **Processo constitucional brasileiro**. [Brazilian constitutional procedure]. 5. ed., rev. aum. e atual. São Paulo: Thomson Reuters Brasil, 2021. p. 967-981.

¹⁰² BRASIL. [Constituição (1988)]. *Constituição* [...], art. 5, LXXII; BRASIL. Lei nº 9.507, de 12 de novembro de 1997. Regula o direito de acesso a informações e disciplina o rito processual do habeas data. [Law no. 9.507 of November 12, 1997. Regulates the right of access to information and establishes the procedural framework for habeas data]. *Diário Oficial da União*: seção 1, Brasília, DF, ano 135, n. 220, p. 26025-26026, 13 nov. 1997. Available from: https://www.planalto.gov.br/ccivil_03/leis/19507.htm. Accessed on: Dec. 22, 2025. For a doctrinal perspective, see ABBOUD, Georges. **Processo constitucional brasileiro**. [Brazilian constitutional procedure]. 5. ed., rev. aum. e atual. São Paulo: Thomson Reuters Brasil, 2021. p. 983-985.

Segurança, MS)¹⁰³, the writ of injunction (*Mandado de Injunção, MI*)¹⁰⁴, citizen suit (*Ação Popular, AP*)¹⁰⁵, public-interest civil action (*Ação Civil Pública, ACP*)¹⁰⁶, and constitutional complaint (*Reclamação, Rcl*)¹⁰⁷. In all these proceedings, whether ordinary litigation, diffuse constitutional review, or constitutional actions, courts are expected to identify and apply the legal norms most appropriate to the case, thereby safeguarding fundamental rights and guarantees against undue restrictions, whether arising from private disputes or acts and omissions of the executive.

Typical competences grounded in checks and balances, by contrast, do not follow the linear sequence in which the legislative function precedes the executive and judicial functions. They are considered typical because they derive from the core function of the branch that exercises them.

Financial oversight¹⁰⁸, for instance, has been associated with the legislative function since the emergence of modern constitutionalism, when control over taxation and public

¹⁰³ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 5, LXIX-LXX; BRASIL. Lei nº 12.016, de 7 de agosto de 2009. Disciplina o mandado de segurança individual e coletivo e dá outras providências. [Law No. 12.016 of August 7, 2009. Regulates the individual and collective writ of mandamus and provides other provisions]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 146, n. 151, p. 2-3, 10 ago. 2009. Available from: https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/lei/112016.htm. Accessed on: Dec. 22, 2025. For a doctrinal perspective, see ABBoud, Georges. **Processo constitucional brasileiro**. [Brazilian constitutional procedure]. 5. ed., rev. aum. e atual. São Paulo: Thomson Reuters Brasil, 2021. p. 986-1000.

¹⁰⁴ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 5, LXXI; BRASIL. Lei nº 13.300, de 23 de junho de 2016. [Law No. 13.300 of June 23, 2016. Regulates the individual and collective writ of injunction and provides other provisions]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 153, n. 120, p. 1, 24 jun. 2016. Available from: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/113300.htm. Accessed on: Dec. 22, 2025. For a doctrinal perspective, see ABBoud, Georges, *op. cit.*, p. 1000-1010.

¹⁰⁵ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 5, LXXIII; BRASIL. Lei nº 4.717, de 29 de junho de 1965. Regula a ação popular. [Law No. 4.717 of June 29, 1965. Regulates civil suit (Law of Civil Suit)]. **Diário Oficial da União**: seção 1, Brasília, DF, 5 jul. 1965. Available from: https://www.planalto.gov.br/ccivil_03/leis/l4717.htm. Accessed on: Dec. 22, 2025.

¹⁰⁶ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 129, III; BRASIL. Lei nº 7.347, de 24 de julho de 1985. Disciplina a ação civil pública de responsabilidade por danos causados ao meio ambiente, ao consumidor, a bens e direitos de valor artístico, estético, histórico, turístico e paisagístico e dá outras providências. [Law No. 7.347 of July 24, 1985. Regulates public civil action and provides other provisions (Public Civil Action Law)]. **Diário Oficial da União**: seção 1, Brasília, DF, p. 10649, 25 jul. 1985. Available from: https://www.planalto.gov.br/ccivil_03/leis/l7347orig.htm. Accessed on: Dec. 22, 2025.

¹⁰⁷ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 102, I, “I”, and Art. 105, I, “F”; BRASIL. Lei nº 13.105, de 16 de março de 2015. Código de Processo Civil. [Law No 13.105 of March 16, 2015. Civil Procedure Code]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 152, n. 51, p. 1-51, 17 mar. 2015. Arts. 988 to 993. Available from: <https://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=17/03/2015&jornal=1&pagina=51&totalArquivos=128>. Accessed on: Dec. 22, 2025.

¹⁰⁸ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 49, X, and Arts. 70 to 75; BRASIL. Lei Complementar nº 101, de 4 de maio de 2000. Estabelece normas de finanças públicas voltadas para a responsabilidade na gestão fiscal e dá outras providências. [Supplementary Law no. 101 of May 4, 2000. Establishes public finance rules aimed at fiscal responsibility in public financial management and provides other provisions]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 137, n. 86-E, p. 1, 5 maio 2000. Available from: https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp101.htm. Accessed on: Dec. 22, 2025; BRASIL. Lei nº 4.320, de 17 de março de 1964. Estatui Normas Gerais de Direito Financeiro para elaboração e controle dos orçamentos e balanços da União, dos Estados, dos Municípios e do Distrito Federal. [Law No. 4.320 of March 17, 1964. Establishes general rules of financial law for the preparation and control of budgets and balance sheets of the

expenditure became an instrument for limiting executive power and ensuring accountability in the management of public resources¹⁰⁹. The legislature is particularly suitable for this task because its representative composition and deliberative procedures confer democratic legitimacy on the authorization of public spending and the supervision of its execution, including the approval of justified deviations¹¹⁰. This competence, however, is exercised only after the executive has implemented the budget.

Clemency¹¹¹, whose origins lie in ancient civilizations, is a competence typically vested in the executive or the authorities that preceded its modern form¹¹². As the branch responsible for enforcing the law, it retains the prerogative to temper, suspend, or commute its application to remedy excesses or injustices — particularly in cases involving deprivation of liberty — within the limits established by law. This prerogative, however, can be exercised only after adjudication.

Abstract constitutional review, developed in the twentieth century, was entrusted to the judiciary to safeguard constitutional supremacy, although its legitimacy remains contested¹¹³.

Union, the States, the Municipalities, and the Federal District]. **Diário Oficial da União**: seção 1, Brasília, DF, p. 2745, 23 mar. 1964. Available from: https://www.planalto.gov.br/ccivil_03/leis/l4320.htm. Accessed on: Dec. 22, 2025.

¹⁰⁹ DOUGLAS, James W.; KRAVCHUK, Robert S. Creating the executive budget process: what was Congress thinking? **Presidential Studies Quarterly**, [s. l.], v. 53, n. 3, p. 407-425, 2023. Available from: <https://doi.org/10.1111/psq.12828>. Accessed on: Dec. 30, 2025; BROCK, David M.; ROWE, Malcolm. Law, convention and practice: Governor's special warrants. **Canadian Journal of Political Science**, [s. l.], p. 1-27, 2025. Available from: <https://doi.org/10.1017/S0008423925100565>. Accessed on: Dec. 30, 2025.

¹¹⁰ Since Articles 49, IX, and 71 of the 1988 Constitution vest the Brazilian Congress with the authority to judge the Brazilian President's annual accounts and examine other reports submitted by the Executive, the Brazilian Congress may approve these accounts and reports even in the face of technical opinions recommending their rejection. This authority, however, does not preclude oversight bodies from conducting investigations or pursuing accountability, in accordance with the principle of the independence of proceedings (*princípio da independência das instâncias*), under which political, administrative, civil, and criminal responsibility are assessed separately, with cross-effects arising only when provided by law.

¹¹¹ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 84, XII; BRASIL. Decreto-Lei nº 3.689, de 3 de outubro de 1941. Código de Processo Penal. [Decree-Law No. 3,689 of October 3, 1941. Code of Criminal Procedure]. **Diário Oficial da União**: seção 1, Rio de Janeiro, p. 19699, 13 out. 1941. Available from: https://www.planalto.gov.br/ccivil_03/decreto-lei/del3689.htm. Accessed on: Dec. 22, 2025; BRASIL. Lei nº 7.210, de 11 de julho de 1984. Institui a Lei de Execução Penal. [Law No. 7.210 of July 11, 1984. Penitentiary Execution Law]. **Diário Oficial da União**: seção 1, Brasília, DF, p. 10227, 13 jul. 1984. Arts. 188 and 192. Available from: https://www.planalto.gov.br/ccivil_03/leis/l7210.htm. Accessed on: Dec. 22, 2025.

¹¹² BARKOW, Rachel E.; OSLER, Mark. Clemency. **Annual Review of Criminology**, [s. l.], v. 7, p. 311-327, 2024. Available from: <https://doi.org/10.1146/annurev-criminol-022222-040514>. Accessed on: Oct. 25, 2025.

¹¹³ Abstract constitutional review was originally conceived, in Kelsen's terms, as a "negative act of legislation". In this view, a decision annulling a statute possessed the same normative character as a statute repealing another statute, *cf.* KELSEN, Hans. Judicial review of legislation: a comparative study of the Austrian and the American Constitution. **The Journal of Politics**, [s. l.], v. 4, n. 2, p. 183-200, maio 1942. p. 187-188. Available from: <https://www.jstor.org/stable/2125770>. Accessed on: Dec. 31, 2025. Kelsen, like many of his French and German contemporaries, understood the normative force of a constitution to depend on its hierarchical superiority over ordinary legislation, a condition he regarded as essential to the preservation of the rule of law, *cf.* STONE, Alec. The birth and development of abstract review: constitutional courts and policymaking in Western Europe. **Policy Studies Journal**, [s. l.], v. 19, n. 1, p. 81-95, 1990. p. 83. Available from: <https://scispace.com/pdf/the-birth-and-development-of-abstract-review-constitutional-4mlivpgud.pdf>. Accessed Dec. 29, 2025. This original conception

Unlike ordinary adjudication, it is not contingent upon disputes arising from the application of a law; rather, it may be initiated solely based on the existence or absence of a law or an act of public authority (*ato do poder público*). It may occur before a law is enacted, as in a direct action for the declaration of unconstitutionality by omission (*Ação Direta de Inconstitucionalidade por Omissão, ADO*)¹¹⁴; after a law has been enacted, as in an *ADI*¹¹⁵ or a direct action for the declaration of constitutionality (*Ação Declaratória de Constitucionalidade, ADC*)¹¹⁶; or either before or after an act of public authority, as in a *ADPF*¹¹⁷.

Atypical competences grounded in the separation of powers are inward-looking, as they primarily aim to preserve institutional autonomy. Although their effects may extend beyond a branch's internal sphere, their primary purpose is to safeguard its ability to perform its core function within the broader governance process.

As Silva observes, this occurs, for instance, when the Brazilian Congress and the courts manage their own administrative structures, such as decisions on appointments and dismissals, or when the judiciary issues its own internal regulations¹¹⁸. Although these competences do not derive from each branch's core function — namely, the legislative and judicial functions —, they reduce the risk of undue external interference and are essential to ensuring that each branch can effectively carry out its main responsibilities.

of abstract constitutional review, however, has increasingly been supplemented — and in some contexts displaced — by interpretive rulings, a shift that has gradually blurred the boundary between adjudication and judicial lawmaking. For a critical analysis of this phenomenon, with a particular focus on Brazil, see MEYER, Emílio Peluso Neder. **Decisão e jurisdição constitucional: crítica às sentenças intermediárias, técnicas e efeitos do controle constitucionalidade em perspectiva comparada**. [Decision and constitutional jurisdiction: a critique of intermediate judgments, techniques, and the effects of constitutional review in comparative perspective]. Rio de Janeiro: Lumen Juris, 2017.

¹¹⁴ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 102, I, “a”; BRASIL. Lei nº 9.868, de 10 de novembro de 1999. Dispõe sobre o processo e julgamento da ação direta de inconstitucionalidade e da ação declaratória de constitucionalidade perante o Supremo Tribunal Federal. [Law No. 9.868 of November 10, 1999. Provides for the procedure and adjudication of direct actions of unconstitutionality and declaratory actions of constitutionality before the Supreme Federal Court]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 137, n. 116-E, p. 1, 11 nov. 1999. Available from: https://www.planalto.gov.br/ccivil_03/leis/19868.htm. Accessed on: Dec. 22, 2025.

¹¹⁵ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 102, I, “a”; BRASIL. Lei nº 9.868, de 10 de novembro de 1999. Dispõe sobre o processo e julgamento da ação direta de inconstitucionalidade e da ação declaratória de constitucionalidade perante o Supremo Tribunal Federal. [Law No. 9.868 of November 10, 1999. Provides for the procedure and adjudication of direct actions of unconstitutionality and declaratory actions of constitutionality before the Supreme Federal Court]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 137, n. 116-E, p. 1, 11 nov. 1999. Available from: https://www.planalto.gov.br/ccivil_03/leis/19868.htm. Accessed on: Dec. 22, 2025.

¹¹⁶ *Ibid.*

¹¹⁷ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 102, §1º; BRASIL. Lei nº 9.882, de 3 de dezembro de 1999. Dispõe sobre o processo e julgamento da arguição de descumprimento de preceito fundamental, nos termos do § 1º do art. 102 da Constituição Federal. [Law No. 9.882 of December 3, 1999. Provides for the procedure and adjudication of claims of breach of fundamental precept, pursuant to paragraph 1 of article 102 of the Federal Constitution]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 137, n. 232-E, p. 2, 6 dez. 1999. Available from: https://www.planalto.gov.br/ccivil_03/leis/19882.htm. Accessed on: Dec. 22, 2025.

¹¹⁸ SILVA, José Afonso da. **Curso de Direito Constitucional Positivo**. [Positive constitutional law]. 39. ed. rev. e aum. São Paulo: Malheiros Editores, 2016. p. 111-112.

Up to now, the issuance of delegated laws by the Executive branch also falls within this category, given their normative content. Since the promulgation of the 1988 Constitution, only two delegated laws have been enacted, both in 1992. The Delegated Law No. 12 created a Military Activity Allowance (*Gratificação de Atividade Militar*) for Armed Forces personnel¹¹⁹, and the Delegated Law No. 13 established Activity Allowance (*Gratificações de Atividade*) for civilian personnel of the executive, revised benefits, and introduced other related measures¹²⁰. This classification, however, rests on practical considerations. In theory, nothing prevents delegated law from being used as an instrument of restraint and accountability.

Atypical competences grounded in checks and balances, by contrast, are outward-looking. They are considered atypical because they derive from functions other than the core function of the branch that exercises them and are conferred primarily to promote interbranch restraint and accountability.

In response to the Executive's recurrent use of its powers to control and censor radio and television during the 1964–1985 dictatorship, often to shape public discourse and legitimize the regime¹²¹, the 1988 Constitution departed from the ordinary allocation of authority. Although broadcasting concessions would ordinarily fall within the Executive's prerogatives, given that broadcasting is considered a public service in Brazil¹²², the 1988 Constitution reassigned this competence to the Legislature, thereby limiting presidential influence over the media¹²³.

Similarly, the competences of Brazil's Electoral Justice System (*Justiça Eleitoral*) extend well beyond the judicial function. They encompass the issuance of regulations that bind not only the political parties and candidates but also the government during the electoral period. Article 15 of Resolution No. 23.735/2024 of the Superior Electoral Court (*Tribunal Superior*

¹¹⁹ BRASIL. Lei Delegada nº 12, de 7 de agosto de 1992. Dispõe sobre a instituição de Gratificação de Atividade Militar para os servidores militares federais das Forças Armadas. [Delegated Law No. 12 of August 7, 1992: provides for the establishment of a Military Activity Allowance for federal military personnel of the Armed Forces]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 130, n. 152, p. 10805, 10 ago. 1992. Available from: https://www.planalto.gov.br/ccivil_03/leis/ldl/Ldl12.htm. Accessed on: Dec. 22, 2025.

¹²⁰ BRASIL. Lei Delegada nº 13, de 27 de agosto de 1992. Institui Gratificações de Atividade para os servidores civis do Poder Executivo, revê vantagens e dá outras providências. [Delegated Law No. 13 of August 27, 1992. Institutes Activity Allowances for civil servants of the Executive Branch, revises benefits, and provides other provisions]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 130, n. 166, p. 11785, 10 ago. 1992. Available from: <https://www2.camara.leg.br/legin/fed/leidel/1992/leidelegada-13-27-agosto-1992-354944-publicacaooriginal-1-pl.html>. Accessed on: Dec. 22, 2025.

¹²¹ INTERVOZES. History. **Media Ownership Monitor Brazil 2017**, São Paulo, 29 nov. 2017. Available from: <https://brazil.mom-gmr.org/en/context/history/>. Accessed on: Dec. 22, 2025; RIBKE, Nahuel. Decoding television censorship during the last Brazilian military regime. **Media History**, London, v. 17, n. 1, p. 49-61, 2011. DOI: 10.1080/13688804.2011.532378. Available from: <https://doi.org/10.1080/13688804.2011.532378>. Accessed on: Dec. 19, 2025.

¹²² BRASIL. [Constituição (1988)]. **Constituição [...]**, art. 21, XII, “a”.

¹²³ *Ibid.*, art. 49, XII.

Eleitoral, TSE), issued under Article 73 of Law No. 9.504/1997, bars social programs executed by entities linked to candidates, defines prohibited forms of institutional publicity, and requires officials to adapt institutional communication channels accordingly¹²⁴.

The issuance of provisional measures by the Brazilian President may also fall within this category, depending on their normative content. Unlike delegated laws, provisional measures have been employed frequently since the enactment of the 1988 Constitution, serving not only to preserve institutional autonomy, but also as instruments of restraint and accountability. Provisional Measure No. 1.126/2022¹²⁵, for instance, repealed Law No. 14.125/2021¹²⁶, which had authorized the Union, the States, the Federal District, and the Municipalities to purchase vaccines and assume civil liability for post-vaccination adverse events under the relevant acquisition or supply agreements during the COVID-19 pandemic¹²⁷.

Although it requires further refinement and empirical validation, this preliminary categorization of the competences established in Title IV provides a clearer understanding of the complex institutional design of the 1988 Constitution. Its exploratory character is also evident in the aspects it leaves aside, particularly the competences attributed to the Institutions Essential to Justice set out in Chapter IV (Articles 127–135).

¹²⁴ BRASIL. Tribunal Superior Eleitoral. Resolução nº 23.735, de 27 de fevereiro de 2024. Dispõe sobre os ilícitos eleitorais. [Resolution No. 23.735 of February 27, 2024]. **Diário da Justiça Eletrônico — Tribunal Superior Eleitoral**: Brasília, DF, n. 29, p. 110-117, 4 mar. 2024. Art. 15. Available from: <https://www.tse.jus.br/legislacao/compilada/res/2024/resolucao-no-23-735-de-27-de-fevereiro-de-2024>. Accessed on: Dec. 22, 2025.

¹²⁵ BRASIL. Medida Provisória n. 1126, de 15 de junho de 2022. Revoga a Lei nº 14.125, de 10 de março de 2021, que dispõe sobre a responsabilidade civil relativa a eventos adversos pós-vacinação contra a covid-19 e sobre a aquisição e distribuição de vacinas por pessoas jurídicas de direito privado. [Provisional Measure No. 1.126 of June 15, 2022. Revokes Law no. 14.125 of March 10, 2021, which provides for civil liability relating to adverse events following Covid-19 vaccination and for the acquisition and distribution of vaccines by private legal entities]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 160, n. 120, p. 1, 15 jun. 2022. Available from: https://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2022/Mpv/mpv1126.htm. Accessed on: Dec. 22, 2025. Later converted into Law No. 14.466/2022.

¹²⁶ BRASIL. Lei nº 14.125, de 10 de março de 2021. Dispõe sobre a responsabilidade civil relativa a eventos adversos pós-vacinação contra a Covid-19 e sobre a aquisição e distribuição de vacinas por pessoas jurídicas de direito privado. [Law No. 14.125 of March 10, 2021: provides for civil liability relating to adverse events following Covid-19 vaccination and for the acquisition and distribution of vaccines by private legal entities]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 159, n. 46-A, p. 3, 10 mar. 2021. Available from: https://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2021/Lei/L14125.htm. Accessed on: Dec. 22, 2025.

¹²⁷ For the full statement of reasons accompanying the provisional measure, including the constitutional requirements of relevance and urgency, see BRASIL. Medida Provisória n. 1.126, de 15 de junho de 2022. Revoga a Lei nº 14.125, de 10 de março de 2021, que dispõe sobre a responsabilidade civil relativa a eventos adversos pós-vacinação contra a covid-19 e sobre a aquisição e distribuição de vacinas por pessoas jurídicas de direito privado. [Provisional Measure No. 1.126 of June 15, 2022. Revokes Law no. 14.125 of March 10, 2021, which provides for civil liability relating to adverse events following Covid-19 vaccination and for the acquisition and distribution of vaccines by private legal entities]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 160, n. 120, p. 1, 15 jun. 2022. Available from: https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2209238&filename=Avulso%20MPV%201126/2022. Accessed on: Dec. 22, 2025.

These include institutions such as the Public Prosecutor's Office and the Public Defender's Office. While they exercise competences that can broadly be described as arising from the executive function, insofar as their primary purpose is to ensure the implementation and enforcement of the law consistent with fundamental rights and guarantees, they neither belong to the executive branch nor are subordinate to it. Their distinctive position within the constitutional order suggests that their relationship to the separation of powers and related principles warrants further analysis, which is underexplored in the literature reviewed in this chapter¹²⁸. Table 1 outlines the proposed framework, indicating how the exercise of political authority by the legislative, executive, and judiciary branches in Brazil may be situated within the four following categories.

Table 1 – Preliminary categorization of competences under Article 2, Article 60, §4, III, and Title IV of the 1988 Constitution

(to be continued)

	Category	Definition	Examples within the Brazilian jurisdiction
I	Typical competences grounded in the separation of powers	They derive from a branch's core function, and they are exercised within a linear sequence in which the legislative function precedes the executive function, which is in turn followed by the judicial function.	The Legislative's competences to propose, deliberate, and enact legislation: Arts. 22; 48; 49, XI; and 59 of the 1988 Constitution; and, regarding the creation of the CPMF, Article 74 of the Act of Temporary Constitutional Provisions (<i>Atos das Disposições Constitucionais Transitórias, ADCT</i>) of the 1988 Constitution. The Executive's competences to implement them: Arts. 76; 85, VI and VII; and others of the 1988 Constitution; and, regarding the collection of the CPMF, Art. 11 et seq., Law No. 9.311/1996. The Judiciary's competences to adjudicate disputes arising from their implementation: Art. 5, XXXV, read in conjunction with Arts. 102, 105, 109, 114, 121, and others of the 1988 Constitution; Incident of Unconstitutionality (Art. 97 of the 1988 Constitution, read in conjunction with Arts. 948 to 950 of Law No. 13.105/2015); Extraordinary Appeal (Art. 102, III, of the 1988 Constitution); Habeas Corpus (Art. 5, LXVIII, of the 1988 Constitution, read in conjunction with Arts. 647 to 667 of Decree-Law No. 3.689/1941); Habeas Data (Art. 5, LXXII, of the 1988 Constitution, read in

¹²⁸ For an overview of the topic that includes an analysis of Brazil, see TUSHNET, Mark. **The new fourth branch: institutions for protecting constitutional democracy**. Cambridge: Cambridge University Press, 2021.

			conjunction with Law No. 9.507/1997); Writ of Mandamus (Art. 5, LXIX–LXX, of the 1988 Constitution, read in conjunction with Law No. 12.016/2009); Writ of Injunction (Art. 5, LXXI, of the 1988 Constitution, read in conjunction with Law No. 13.300/2016); Citizen Suit (Art. 5, LXXIII, of the 1988 Constitution, read in conjunction with Law No. 4.717/1965); Public-interest Civil Action (Art. 129, III, of the 1988 Constitution, read in conjunction with Law No. 7.347/1985); Constitutional Complaint (Art. 102, I, ‘I’ and Art. 105, I, ‘F’, of the 1988 Constitution, read in conjunction with Arts. 988 to 993 of Law No. 13.105/2015).
II	Typical competences grounded in checks and balances	They derive from a branch’s core function, but they are not exercised within a linear sequence in which the legislative function precedes the executive function, which is in turn followed by the judicial function	The Legislative’s competences to oversee the Executive’s accounting, financial, budgetary, operational, and asset management: Art. 49, IX, and Arts. 70 to 75 of the 1988 Constitution, read in conjunction with Law No. 4.320/1964 and Supplementary Law No. 101/2000. The Executive’s competence to grant clemency for penalties imposed by the Judiciary: Art. 84, XII, of the 1988 Constitution, read in conjunction with Arts. 107, II, 120, 187 of Decree-Law No. 2.848/1940; Arts. 738 to 740 of Decree-Law No. 3.689/1941; Arts. 188 and 192 of Law No. 7.210/1984. The Judiciary’s competences to review the absence or existence of a law or an act of the public administration: Art. 102, I, ‘a’, of the 1988 Constitution, read in conjunction with Law No. 9.868/1999; and Art. 102, §1º, of the 1988 Constitution, read in conjunction with Law No. 9.882/1999.
III	Atypical competences grounded in the separation of powers	They do not derive from a branch’s core function, and they are inward-looking, serving primarily to preserve the institutional autonomy of the branch that exercises them.	The Legislative’s competences to administer its own personnel and security: Arts. 51, III–IV, and 52, XII–XIII, of the 1988 Constitution. The Judiciary’s competences to administer its own personnel and issue internal regulations: Art. 96, I–II, of the 1988 Constitution. The Executive’s competences to propose bills concerning the creation of positions, offices, or public employment within the administration, to set or adjust their remuneration, and to issue the regulations

			necessary for the implementation of laws enacted by the Brazilian Congress: Arts. 61, §1st, and 68 of the 1988 Constitution, read in conjunction with Delegated Law n. 12/1992 and Delegated Law No. 13/1992; Arts. 84, IV; and 87, II, of the 1988 Constitution.
IV	Atypical competences grounded in checks and balances	They do not derive from a branch's core function, and they are outward-looking, serving primarily to enable mechanisms of interbranch restraint and accountability.	The Legislative's competence to authorize radio and television concessions: Arts. 49, XII, and 223 of the 1988 Constitution. The Judiciary's competence to issue regulations on social programs, institutional publicity, and official communication channels during the electoral period: Art. 121 of the 1988 Constitution, read in conjunction with Art. 23, IX, of Law No. 4.373/1965; Art. 105 of Law No. 9.504/1997; and TSE Resolution No. 23.735/2024. The Executive's competences to issue provisional measures and delegated laws on matters not prohibited by Articles 62, §1, and 68, §1, of the 1988 Constitution: Arts. 62 and 68 of the 1988 Constitution. Regarding the revocation of the authorization granted to the Union, the States, the Federal District, and the Municipalities to purchase vaccines and assume civil liability for post-vaccination adverse events under the terms of the relevant acquisition or supply agreements during the COVID-19 pandemic, Art. 62 of the 1988 Constitution, read in conjunction with Provisional Measure No. 1.126/2022 and Law No. 14.466/2022.

Source: elaborated by the author.

While these categories provide a framework for understanding the institutional arrangements set out in Title IV, they leave unresolved questions. What are the normative implications of classifying competences as typical or atypical and as grounded in either the separation of powers or checks and balances? When all four types of competences are exercised simultaneously, which inevitably occurs in the daily operation of governance, and come into conflict, by what criteria can one determine whether a branch is acting within its mandate or exceeding its authority?¹²⁹

¹²⁹ In Brazilian constitutional hermeneutics, the Constitution must be interpreted as a coherent whole, an integrated and indivisible normative system in which each provision derives meaning only in relation to the others. The principle of the unity of the Constitution (*princípio da unidade da Constituição*) precludes fragmented

Although a comprehensive answer to these questions lies beyond the scope of this dissertation, they point to a third and final inference. Despite their different emphases, the authors discussed in this chapter share a common premise. The separation of powers emerged within the tradition of modern constitutionalism as a safeguard for political liberty and restraint on arbitrariness.

From this perspective, political authority is legitimate only when exercised in accordance with the law. The separation of powers promotes this ideal by assigning governmental functions to distinct and independent branches, preventing any single authority from simultaneously legislating, executing, and adjudicating. As a result, it also establishes distinct institutional channels through which political authority is exercised.

On this basis, the normative value of the separation of powers becomes more apparent. The distinction among legislative, executive, and judicial functions is not directed primarily at producing institutions capable of checking and balancing one another; rather, its purpose is to establish institutions suited to the distinctive nature of each function, enabling each to be performed in the manner that best fulfills its role within the broader process of governance.

In this sense, the separation of powers performs a dual role: it not only limits political authority, but also structures the conditions under which authority may be legitimately exercised. This is precisely what Articles 2; 60, §4, III; and Title IV of the 1988 Constitution achieve by delineating the prerogatives, powers, tasks, and obligations through which governmental functions are carried out.

These assumptions — namely, that the principle possesses an intrinsic normative value and plays a dual role in limiting political authority and structuring its legitimate exercise — correspond closely to those underlying Vile’s “pure doctrine”, a systematic effort to articulate a normative account of the separation of powers. In light of this convergence, Vile’s formulation will be examined in greater detail in the following section.

II.2 THE PURE DOCTRINE OF THE SEPARATION OF POWERS

interpretations and requires the resolution of apparent contradictions without establishing any hierarchy among constitutional norms, *cf.* BERCOVICI, Gilberto. O princípio da unidade da Constituição. [The principle of the unity of the Constitution]. **Revista de Informação Legislativa**, Brasília, DF, v. 37, n. 145, p. 95-104, jan./mar. 2000. Available from: <http://www2.senado.leg.br/bdsf/handle/id/559>. Accessed on: Nov. 22, 2025. Based on this premise, conflicts in the concurrent exercise of governmental functions do not originate from the constitutional text itself, but from interpretations that disturb its systemic coherence. If each function were executed as intended, no conflict would arise. The challenge for political actors, therefore, is to identify the intended mode of performance, which is not explicitly delineated in the Constitution and can only be discerned through interpretation.

Vile analysis of the separation of powers seeks not only to trace the doctrine's historical development, but also to identify the elements that continue to shape modern conceptions of constitutional design¹³⁰. By clarifying its theoretical components and evaluating their contemporary relevance, he provides a framework for broader reflection on governmental structure and authority distribution within the State.

Vile notes that the absence of a precise and widely shared definition of the doctrine is a persistent difficulty in the literature. Many authors refer to the separation of powers without specifying its essential features or clarifying its relation to concepts such as checks and balances. This resulted in a body of interpretations characterized by conceptual ambiguity, a pattern also evident in the diversity of views discussed in Section II.1.1.

To address this issue, Vile proposes a “pure” doctrine of the separation of powers. It is a model that seeks to clarify the doctrine's fundamental elements amid its diverse historical and theoretical interpretations. Although he acknowledges that any definition inevitably involves a measure of arbitrariness, he notes that striving for conceptual precision can contribute to greater analytical consistency¹³¹.

In its most abstract form, this pure doctrine holds that the preservation of political liberty requires the division of government into three distinct branches (legislative, executive, and judiciary), each corresponding to a specific and identifiable function¹³². Each branch must confine itself to its own function and prevent encroachment upon the others¹³³. Moreover, the officials who compose these institutions should remain distinct to preclude the same individuals from simultaneously exercising positions in more than one branch.

Shortly after outlining this definition, however, Vile introduces an observation that renders his formulation less straightforward. He suggests that a pure doctrine of the separation of powers would also encompass a conception of checks intended to ensure that no single group can control the machinery of the state. For Vile, this conception is negative in nature, insofar as it assumes that the mere existence of separate bodies performing distinct functions is sufficient to prevent the concentration of authority.

Vile then notes that this negative conception fails to answer how officials should be restrained when they attempt to encroach upon the functions of another branch. He argues that this limitation led to the incorporation of additional ideas — most notably, the theory of mixed

¹³⁰ VILE, Maurice John Crawley. **Constitutionalism and the separation of powers**. 2nd ed. Indianapolis: Liberty Fund, 1998. p. 2-3.

¹³¹ *Ibid.*

¹³² *Ibid.*, p. 14.

¹³³ *Ibid.*

government and, in its later development, the theory of checks and balances — to complement and modify the original doctrine of the separation of powers¹³⁴.

In this sense, the analytical boundary between the separation of powers and checks becomes blurred, creating a tension with Vile's own claim that the two are conceptually distinct. Because the present study focuses on the separation of powers, it adopts, from this point forward, only the initial components of Vile's formulation, setting aside the issue of checks. From this perspective, Vile's account rests on three interrelated distinctions: between branches, between functions, and between personnel.

For distinction between branches, although earlier formulations of the separation of powers sometimes relied on a twofold division, the tripartite model had become the dominant governmental structure by the mid-eighteenth century¹³⁵. The longstanding idea of balancing forces within the polity — captured in the classical distribution of authority among King, Lords, and Commons in Britain — provided an influential justification for organizing government around an odd number of institutional centers. In modern contexts, Vile argues that this tripartite structure remains a core expression of liberal-democratic principles, reflecting the functional differentiation of complex societies and the pluralistic view that distinct institutions should embody diverse values and interests¹³⁶. For Vile, this dispersion of authority directly contrasts with totalitarian or absolutist rule.

For the distinction of governmental functions, all political systems, regardless of form, perform legislative, executive, and judicial functions in some manner¹³⁷. These functions may be concentrated in a single individual or body or distributed among several institutions. While the first component outlines the organizational structure of political power, the second describes the actions that governments undertake.

Finally, with respect to personnel, the doctrine also requires the separation of officials. Beyond distinguishing branches and functions, the preservation of political liberty depends on equipping each with a distinct set of individuals¹³⁸. Ensuring that the same persons do not simultaneously perform more than one function is essential to preventing the concentration of authority that gives rise to arbitrary rule.

¹³⁴ VILE, Maurice John Crawley. **Constitutionalism** [...], p. 14.

¹³⁵ *Ibid.*, p. 16.

¹³⁶ *Ibid.*, p. 16-17.

¹³⁷ VILE, Maurice John Crawley. **Constitutionalism** [...], p. 17-18.

¹³⁸ *Ibid.*, p. 18-19.

A more flexible reading of Vile's account suggests, however, that this requirement is not absolute¹³⁹. In practice, some institutional overlap is unavoidable, as when a member of the legislature serves in the prime minister's or president's cabinet. The doctrine ultimately forbids a complete identity of membership across branches, ensuring that no single body of officials fully overlaps with another.

For Vile, these three components are essential to preserving political liberty, whether conceived in negative or positive terms¹⁴⁰. This is because, regardless of the conception of liberty one adopts, the separation of powers may still be understood as serving a dual purpose. It limits political authority by preventing the concentration of power, while simultaneously structuring its legitimate exercise through previously established prerogatives, powers, tasks, and obligations.

By introducing internal divisions within the state, the separation of powers aims to prevent the domination of the political order by any single group and secure institutional conditions conducive to individual development and social stability¹⁴¹. Far from suggesting a tension between liberty and effective government, Vile treats them as mutually reinforcing. The arrangements that constrain political power also enable its legitimate exercise in the realization of fundamental rights and guarantees.

Beyond providing a more precise definition, Vile's account of the doctrine's dual purpose is one of his most significant contributions, since it brings to light the normative dimension underlying the separation of powers. From this perspective, when political authority is exercised in accordance with the distinctions among branches, functions, and personnel, the institutional conditions necessary for safeguarding political liberty are strengthened. Vile's account aligns with scholarly interpretations of Article 2; Article 60, §4, III; and Title IV of the 1988 Constitution, particularly concerning the role of the separation of powers in limiting political authority, structuring its legitimate exercise, and sustaining a normative value that does not depend on, or derive from, related principles.

Even so, Vile's proposition may face two challenges. On the one hand, empirical studies indicate that separating branches, functions, and personnel does not always favor political

¹³⁹ *Ibid.*, p. 20-21.

¹⁴⁰ *Ibid.*, p. 15. For an introductory discussion of positive and negative liberty, see CARTER, Ian. Positive and Negative Liberty. In: ZALTA, Edward N. (ed.). **The Stanford Encyclopedia of Philosophy**: Spring 2022 Edition. Stanford: Stanford University, 2022. Available from: <https://plato.stanford.edu/archives/spr2022/entries/liberty-positive-negative/>. Accessed on: Dec. 30, 2025; COURTLAND, Shane D.; GAUS, Gerald; SCHMIDTZ, David. Liberalism. In: ZALTA, Edward N. (ed.). **The Stanford Encyclopedia of Philosophy**: Spring 2022 Edition. Stanford: Stanford University, 2022. Available from: <https://plato.stanford.edu/archives/spr2022/entries/liberalism/>. Accessed on: Dec. 22, 2025.

¹⁴¹ VILE, Maurice John Crawley, *op. cit.*, p. 15.

liberty as envisioned by modern constitutionalism; in some contexts, these distinctions diverge from those traditionally associated with the doctrine of the separation of powers. On the other hand, the extent to which his formulation provides normative guidance has been the subject of debate. Although it identifies three commands, these do not specify how governmental functions should be exercised to uphold political liberty. The first issue will be outlined briefly in this section, while the second will be detailed in Chapter III due to its importance for this dissertation.

After the Cold War (1947–1991), democracy became a pillar of the foreign policies of most Western nations. In this new international environment, leaders with authoritarian tendencies increasingly confined their most antidemocratic innovations to informal¹⁴² or “small-c”¹⁴³ domains, while preserving constitutions from earlier democratic periods or adopting new ones designed to resemble them¹⁴⁴. As a result, many authoritarian regimes that emerged during this period retained legislatures (92%), held multiparty elections (69%), and imposed term limits (47%); moreover, their leaders often wield fewer formal powers than their democratic counterparts¹⁴⁵. This pattern also extends to the judiciary; even in authoritarian settings, courts occasionally issue decisions unfavorable to the executive¹⁴⁶.

Maintaining this democratic “veneer” has, after all, been associated with reducing popular and institutional resistance, enhancing perceptions of legitimacy, and decreasing the likelihood of sanctions or diplomatic conflict¹⁴⁷. As Zachary Elkins, Tom Ginsburg, and James Melton observe, constitutions — the legal instruments through which those institutions are usually established — mediate political conflict not only in democracies but also in non-democratic settings¹⁴⁸.

Anne Meng, Jack Paine, and Robert Powell argue that, contrary to what one might expect, authoritarian leaders often govern from a position of insecurity, facing persistent threats

¹⁴² ELKINS, Zachary; MELTON, James. The content of authoritarian constitutions. In: GINSBURG, Tom; SIMPSON, Alberto (ed.). **Constitutions in authoritarian regimes**. Cambridge: Cambridge University Press, 2013. p. 141-164.

¹⁴³ The “small-c” constitution refers to the broader set of constitutional rules derived from sources that include, but are not limited to, judicial decisions, treaties, conventions, and super-statutes, *cf.* CHILTON, Adam; VERSTEEG, Mila. Small-c constitutional rights. **International Journal of Constitutional Law**, [s. l.], v. 20, n. 1, p. 141-176, 2022. Available from: <https://doi.org/10.1093/icon/moac004>. Accessed on: Jan. 12, 2025.

¹⁴⁴ ELKINS, Zachary; MELTON, James, *op. cit.*, p. 141-164.

¹⁴⁵ MENG, Anne; PAINE, Jack; POWELL, Robert. Authoritarian power sharing: concepts, mechanisms, and strategies. **Annual Review of Political Science**, [s. l.], v. 26, p. 153-173, 2023. Available from: <https://www.annualreviews.org/doi/pdf/10.1146/annurev-polisci-052121-020406>. Accessed on: Dec. 14, 2024.

¹⁴⁶ *Ibid.*

¹⁴⁷ LAW, David S.; VERSTEEG, Mila. Constitutional variation among strains of authoritarianism. In: GINSBURG, Tom; SIMPSON, Alberto (ed.). **Constitutions in authoritarian regimes**. Cambridge: Cambridge University Press, 2013. p. 165-196.

¹⁴⁸ ELKINS, Zachary; MELTON, James. The content [...].

from rival elites, opposition groups, and other actors capable of removing them from power¹⁴⁹. To mitigate these risks, they frequently rely on formal institutions that closely resemble those found in democracies, employing them to bind influential actors to the regime. These institutions include ruling parties, legislatures, multiparty elections, executive term limits, ethnically inclusive cabinets, formal appointment of a defense minister, peace settlements that distribute cabinet positions or integrate rebel forces into national armed forces, and arrangements granting regional autonomy¹⁵⁰.

Essentially, these institutions operate as mechanisms for allocating power and resources among competing groups, increasing leadership survival and broadening the regime's support base¹⁵¹, in a manner similar to that observed in more open settings with coalitional governments. From this perspective, differentiation among branches, functions, and personnel may contribute not only to democratization but also to the institutionalization of less democratic regimes, fostering, in both scenarios, a political order that enhances the stability of incumbents and may endure beyond their tenure.

Although this literature raises important debates, a full examination is beyond the scope of this study. The aim here is more modest: to illustrate that, in some contexts, maintaining distinct branches, functions, and personnel — or, more broadly, dispersing authority among multiple political actors and institutions — may not grant political liberty or, at least, not in the way traditionally envisioned by modern constitutionalism. This observation does not intend to diminish the importance of these distinctions in contemporary democracies, where they remain essential to limiting and structuring the exercise of political authority. It does, however, suggest that their justification may not rest solely, or even primarily, on political liberty, even if political liberty may well be among their outcomes. This issue will be detailed in Chapter III.

II.3 PARTIAL CONSIDERATIONS

The analysis developed in this chapter suggests that a normative account of the separation of powers compatible with the 1988 Constitution must first conceive the principle as a safeguard that emerged within modern constitutionalism to protect political liberty. Accepting this premise entails two further implications. First, the separation of powers serves a dual purpose, constraining the exercise of political authority while also structuring the

¹⁴⁹ MENG, Anne; PAINE, Jack; POWELL, Robert, *op. cit.*

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

conditions under which that authority may be legitimately exercised. Second, it has an independent normative value, distinct from checks and other related principles.

Building on these premises, Vile argues that the protection of political liberty depends on the distribution of authority among the legislative, executive, and judiciary branches, each associated with a distinct and identifiable function. Each branch must confine itself to its own function and prevent encroachment upon the others. In addition, personnel from each branch should remain institutionally separate to prevent simultaneous exercise of authority across branches.

Although Vile identifies three requirements derived from the separation of powers — specifically, distinctions between branches, functions, and personnel — as necessary to sustain political liberty, these requirements do not fully explain how governmental functions should be exercised or coordinated to achieve that end. This limitation becomes particularly evident when one considers that the mere maintenance of distinct branches, functions, and personnel — or, more broadly, the dispersion of authority among multiple political actors and institutions — can also be found in authoritarian regimes.

Building on Vile's conception, Jeremy Waldron advances an account to address this gap. Chapter III reconstructs his argument and, when appropriate to this dissertation, draws on examples from Title IV of the 1988 Constitution, with particular reference to Categories I and III of Table 1.

The framework developed in Chapter III is preliminary and limited in scope. Under the 1988 Constitution, the separation of powers operates as a legally binding norm, creating expectations on how governmental functions should be exercised. From this perspective, advancing proposals outlining some of those expectations, even if only preliminarily and partially, is a necessary step toward understanding how they are translated into the budgetary process of the annual budget law.

Accordingly, the framework does not aim to provide a comprehensive theory of the doctrine, resolve all interpretive controversies, or address the full range of complexities associated with the subject. Several questions remain open, including the development of a normative account of checks and balances, the relationship between the separation of powers and checks and balances, and the compatibility of certain institutional arrangements, such as

the Brazilian Electoral Justice System¹⁵² and judicial lawmaking more generally¹⁵³, presenting the normative account of the separation of powers in Chapter III.

¹⁵² For an overview of the distinctive features of the Brazilian Electoral Justice System, see GOLTZMAN, Elder Maia; RAMOS NETO, Newton Pereira. Ativismo judicial e Justiça Eleitoral em suas funções não judicantes: uma análise crítica. [Judicial activism and Electoral Justice in its non-judicial functions: a critical analysis]. **Revista Direito GV**, São Paulo, v. 19, e2322, 2023. Available from: <https://doi.org/10.1590/2317-6172202322>. Accessed on: Dec. 19, 2025.

¹⁵³ For a definition of judicial lawmaking, see MAŁOLEPSZY, Maciej; GŁUCHOWSKI, Michał. Judicial lawmaking in the criminal decisions of the Polish Supreme Court and the German Federal Court of Justice: a comparative view. **International Journal for the Semiotics of Law**, [s. l.], v. 36, p. 1147-1184, 2023. Available from: <https://doi.org/10.1007/s11196-023-09969-y>. Accessed Dec. 19, 2025.

III SEPARATION OF POWERS IN THE BUDGETARY PROCESS OF THE ANNUAL BUDGET LAW UNDER THE 1988 CONSTITUTION

Vile argues that the history of Western political thought is shaped not only by the articulation of normative ideals — justice, liberty, equality, and the protection of property — but also by an in-depth reflection on the institutional arrangements required to give them concrete effect¹⁵⁴. As he observes, these values are not self-executing. They have rarely commanded complete consensus, and their implications are often ambiguous or internally tensioned. Political institutions, therefore, play a central role in mediating disagreement and shaping how these values are interpreted and implemented in practice.

Building on this insight, Vile maintains that Western institutional theorists have been particularly concerned with ensuring that the exercise of political authority does not undermine the very values it seeks to advance¹⁵⁵. This concern is reflected in constitutionalism's dual recognition of the necessity of government for the organization of social life and the need to impose limits on the exercise of governmental authority. Within this framework, the principle of the separation of powers emerges as a means of reconciling authority and restraint. As discussed in Chapter II, it has long been understood as a device for protecting political liberty by serving a dual purpose.

Despite the persistence of this understanding, Vile notes that the historical trajectory of the separation of powers has been uneven. By the mid-twentieth century, the doctrine had fallen into relative disfavor, widely criticized as an impractical model for modern governance or dismissed as an inadequate framework for analyzing contemporary political systems¹⁵⁶. Yet, as he observes, no comparably coherent alternative has emerged to replace it. Efforts to account for the organization and interaction of political institutions have continued to rely, often implicitly, on concepts developed within earlier theories of the separation of powers.

For Vile, this persistence is not incidental. Against the background of a broader legitimacy crisis affecting formal political institutions, the issue that animated classical constitutionalism — the need to limit and control political authority — remains unresolved¹⁵⁷. Although contemporary observers may be skeptical of structural mechanisms designed to

¹⁵⁴ VILE, Maurice John Crawley. *Constitutionalism* [...], p. 1-3.

¹⁵⁵ *Ibid.*, p. 2.

¹⁵⁶ *Ibid.*, p. 9.

¹⁵⁷ *Ibid.*

constrain governmental power, he rejects the view that increasing concentrations of authority are either inevitable or beyond meaningful restraint.

On this view, even when expansions of governmental power appear justified by the military, economic, or social demands of modern states, constitutional analysis must continue to ask which powers are expanding, to what extent, and through which institutional mechanisms they may be effectively limited¹⁵⁸. For Vile, the contemporary predicament is more complex than that faced by earlier liberal theorists. Threats to political liberty now tend to arise less from overt tyranny or deliberate usurpation than incremental institutional developments, often undertaken by officials who understand themselves as responding to pressing policy challenges that require decisive governmental action.

This dynamic complicates the constitutionalist task of imposing effective limits on political authority¹⁵⁹. Critics of state power cannot simply oppose intervention as such, nor can they rely on abstract invocations of liberty. They must also contend with political actors who appeal selectively to constitutional principles, seeking to restrain governmental action when it conflicts with their preferences, while endorsing its expansion when it serves their objectives.

In response to these difficulties, Vile emphasizes the need for clearer concepts in discussions of the separation of powers¹⁶⁰. He suggests that historical debates have often been shaped by imprecise accounts of the doctrine's content, its constituent elements, and its relationship to other strands of political theory. As a result, discussions of its origins, purposes, and contemporary relevance have not always converged on common points of reference.

Although Vile's diagnosis is consistent with prevailing discussions in the literature, his formulation — as anticipated in Chapter II — raises two distinct considerations. The first concerns the relationship between institutional differentiation and political liberty. Empirical evidence indicates that the distinction of branches, functions, and personnel does not consistently promote political liberty as traditionally understood within modern constitutionalism. In some settings, these distinctions appear to diverge from, or do not fully align with, that objective. This observation suggests that the separation of powers may rest on normative commitments beyond the division of functions, branches, and personnel.

Acknowledging this point leads to a second consideration related to the type of normative guidance provided by Vile's framework. Although he identifies three requirements

¹⁵⁸ VILE, Maurice John Crawley. **Constitutionalism** [...], p. 11-12.

¹⁵⁹ *Ibid.*, p. 12.

¹⁶⁰ *Ibid.*, p. 12-14.

derived from the separation of powers as relevant to preserving political liberty,¹⁶¹ these requirements do not indicate how governmental functions should be exercised, or how they should relate to one another, to secure that outcome. An account of the standards governing the exercise of political authority itself remains underdeveloped.

Section III.1 addresses this gap by outlining Waldron's response. Rather than grounding the separation of powers primarily in political liberty, Waldron situates its normative foundation in the rule of law. Section III.1.1 examines the considerations supporting this approach. Although political liberty does not figure as the principal justification in his account, Waldron nonetheless recognizes the importance of differentiating functions, branches, and personnel to the maintenance of the rule of law. On this view, this differentiation is more likely to achieve its normative purpose insofar as the exercise of political authority conforms to standards of articulated governance and integrity, as examined in Section III.1.2.

Building on an initial discussion of the practical implications of these standards, i.e., how they translate into concrete features of institutional design, Section III.2 examines how they apply specifically to the preparation and implementation of the annual budget law under the 1988 Constitution. The analysis then turns to how the reforms that introduced the mandatory parliamentary amendments (*orçamento impositivo*) may relate to these implications. This issue, as defined by the analytical framework set out in Section III.3, is detailed in Chapter IV.

III.1 NORMATIVE JUSTIFICATION AND STANDARDS OF THE SEPARATION OF POWERS

As discussed in Chapter II, for Vile, a “pure” doctrine of the separation of powers rests on the premise that political liberty is secured by dividing governmental functions into three distinct branches — legislative, executive, and judiciary —, each confined to its own function and composed of different officials¹⁶². This institutional design prevents the concentration of power and protects individuals from tyranny¹⁶³.

Waldron, however, contends that this interpretation verges on tautology: “the failure to separate powers leads to arbitrariness because it involves a failure to separate the powers”¹⁶⁴.

¹⁶¹ VILE, Maurice John Crawley. **Constitutionalism** [...], p. 14.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*, p. 14-15.

¹⁶⁴ WALDRON, Jeremy. Separation of powers in thought and practice? **Boston College Law Review**, Boston, v. 54, n. 2, p. 433-468, 2013. p. 454. Available from: <https://bclawreview.bc.edu/articles/702/files/63b27c95dba61.pdf>. Accessed on: Oct. 17, 2024.

Even if liberty may indeed arise from this arrangement, that outcome itself does not explain why governmental functions should be distinguished or how they ought to relate to one another.

Revisiting the classical sources of this interpretation, Waldron observes that both Locke and Montesquieu provided limited reasoning to justify the connection between the separation of powers and the protection of liberty¹⁶⁵. Montesquieu's central claim — “[w]hen legislative power is united with executive power in a single person or in a single body of the magistracy, there is no liberty”¹⁶⁶ — is presented as self-evident. His accompanying explanation, “one can fear that the same monarch or senate that makes tyrannical laws will execute them tyrannically”¹⁶⁷, identifies a potential danger but does not amount to a fully developed causal argument.

Waldron questions why tyranny would necessarily follow when the same authority both makes and enforces the law. He suggests that Montesquieu may have drawn inspiration from Locke's reasoning on how to prevent oppressive legislation¹⁶⁸. Locke argued that the “tyrannical execution of the laws” arises when lawmakers exempt themselves from the norms they impose on others¹⁶⁹. Waldron points out, however, that this interpretation of Montesquieu requires considerable reconstruction, since the argument is not systematically developed in *The Spirit of the Laws*.

A similar difficulty, Waldron argues, arises in Madison's treatment of the separation of powers in *The Federalist Papers*. Madison invokes Montesquieu as an authority on the principle but does not indicate where Montesquieu articulates his reasoning more explicitly. He merely restates the familiar assertion: “[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands... may justly be pronounced the very definition of tyranny”¹⁷⁰. Madison further observes that “it will be proper to investigate the sense in which the preservation of liberty requires that the three great departments of power should be separate and distinct”¹⁷¹. According to Waldron, however, this amounts to only an inquiry into the extent of

¹⁶⁵ WALDRON, Jeremy. Separation [...], p. 452-456.

¹⁶⁶ MONTESQUIEU, Charles de Secondat, Baron de. **The spirit of the laws**. Translated and edited by Anne M. Cohler, Basia Carolyn Miller and Harold Samuel Stone. Cambridge: Cambridge University Press, 1989. p. 157.

¹⁶⁷ *Ibid.*, p. 157.

¹⁶⁸ WALDRON, Jeremy, *op. cit.*, p. 453.

¹⁶⁹ LOCKE, John. **Two treatises of government**. Edited by Peter Laslett. Student ed. Cambridge: Cambridge University Press, 1988. p. 364.

¹⁷⁰ HAMILTON, Alexander; MADISON, James; JAY, John. **The Federalist Papers**. Edited with an introduction and notes by Lawrence Goldman. Oxford: Oxford University Press, 2008. p. 239.

¹⁷¹ *Ibid.*

separation that is desirable, rather than an explanation of why that separation is necessary for liberty¹⁷².

The persistence of this conceptual gap, Waldron suggests, has led modern theorists to conflate the separation of powers with related but distinct principles, such as the division of power and checks and balances¹⁷³. The rationale for this latter mechanism is perhaps somewhat clearer; it is generally understood to constrain authority through mutual oversight. By contrast, the tradition of political thought has provided few persuasive explanations for why the separation of powers itself should have intrinsic normative significance.

Waldron argues that the normative force of the separation of powers lies not in its connection to liberty, but in the structure it brings to the exercise of authority. By distinguishing the functions of legislating, executing, and adjudicating, the principle gives governance the form of a process unfolding through successive stages of decision-making and justification.

From this perspective, the rule of law — rather than political liberty — emerges as the normative foundation of the separation of powers¹⁷⁴. As an ideal of political morality, the rule of law states the primacy of law and legal institutions within the system of governance. In Waldron's account, this ideal comprises two interrelated sets of principles: formal and procedural¹⁷⁵.

The formal principles require that legal norms be general, clear, public, stable, and prospective, enabling individuals to know and rely on them in ordering their lives. The procedural principles concern the application of those norms. They demand that penalties, coercion, or serious losses imposed by the state occur only through fair trials before impartial and independent courts, with full guarantees of due process, such as the rights to counsel, present and challenge evidence, and receive a reasoned decision¹⁷⁶.

These principles, however, would be difficult to sustain without the separation of powers. Legal norms are unlikely to remain general, clear, public, stable, and prospective where the same authority is responsible for their formulation, enforcement, and adjudication, or where enforcement and adjudication precede their enactment. Nor are trials likely to be fair, impartial, and independent — fully ensuring due process — if the authority that crafts the norms also enforces them and settles disputes under them, or if adjudication and enforcement occur before

¹⁷² WALDRON, Jeremy. *op. cit.*, p. 455.

¹⁷³ WALDRON, Jeremy. Separation [...], p. p. 438-443, 455.

¹⁷⁴ *Ibid.*, p. 453.

¹⁷⁵ WALDRON, Jeremy. The Rule of Law. In: ZALTA, Edward N.; NODELMAN, Uri (ed.). **The Stanford Encyclopedia of Philosophy**: Fall 2023 Edition. Stanford: Stanford University, 2023. Available from: <https://plato.stanford.edu/entries/rule-of-law/>. Accessed on: Aug. 12, 2025.

¹⁷⁶ *Ibid.*

the norms are made public and societal actors have a meaningful opportunity to adjust their conduct accordingly.

Engaging with concerns of this kind, Waldron derives two normative standards that specify how the separation of powers must operate to sustain the rule of law: articulated governance and integrity. These standards describe the conditions under which the division of governmental functions, traditionally referred to as the separation of powers, fulfills its normative purpose.

Articulated governance refers to the orderly sequencing of governmental functions. The legislative, executive, and judicial functions must not only remain distinct but must also be exercised in that specific order. In practical terms, the legislature enacts legislation, the executive implements it, and the judiciary resolves disputes arising from this implementation (Category I of Table 1).

Integrity requires each branch to perform its assigned role within the overall governance process. Each stage carries intrinsic significance and embodies values such as publicity, stability, and due process. When these stages are blurred or collapsed, the separation of powers is undermined, and the rule of law is placed at risk.

Although Waldron illustrates the normative standard of integrity primarily through examples, his argument gains analytical clarity when read alongside the requirements identified by Viktor Kazai¹⁷⁷. Drawing on both accounts, this dissertation understands integrity as comprising three interrelated requirements. The first is defining authority; the legislative, executive, and judiciary branches hold exclusive competences of particular importance that give concrete expression to their respective core functions and are not, in principle, open to delegation, given that their original allocation is grounded in each branch's institutional design. The second is institutional autonomy, understood as the capacity of each branch to organize and administer its internal affairs without undue interference (Category III of Table 1). The third is the prohibition of usurpation and relinquishment of function, which ensures that no branch encroaches upon the function of another or abdicates its own.

Together, articulated governance and integrity define the normative content of the separation of powers. When they are not fulfilled, the institutional conditions of the rule of law may be undermined, even when a formal division of functions, branches, and personnel is

¹⁷⁷ KAZAI, Viktor. **The equilibrium of parliamentary law-making**: comparative perspectives on the role of courts in a democracy. Abingdon; New York: Routledge, 2025. p. 31-37.

maintained. The following sections detail these standards and analyze how they are reflected in the process of preparing and implementing the annual budget law under the 1988 Constitution.

III.1.1 The Rule of Law as a Normative Justification

Waldron situates the rule of law within a long and varied intellectual tradition, drawing on contributions from Aristotle (c. 350 BC), Sir John Fortescue (1471), Niccolò Machiavelli (1517), James Harrington (1656), John Locke (1689), Montesquieu (1748), the authors and critics of *The Federalist Papers* (late eighteenth century), Albert Venn Dicey (1885), Friedrich August von Hayek (1944, 1960, 1973), Lon Fuller (1964), John Rawls (1971), Joseph Raz (1977), John Finnis (1980), Michael Oakeshott (1983), and Ronald Dworkin (1985)¹⁷⁸.

Acknowledging this historical heritage, Waldron conceives the rule of law as an ideal of political morality centered on the primacy of law and legal institutions in a system of governance¹⁷⁹. At its core, the rule of law requires that political authority be exercised within a framework of well-established public norms, rather than in an arbitrary or *ad hoc* manner shaped by personal preferences. Thus, it demands that governments act consistently within the limits of law and remain accountable through law whenever there is reason to suspect unauthorized action by those in power.

Waldron also emphasizes that the rule of law binds not only governmental authorities but also individuals¹⁸⁰. Citizens are expected to comply with legal norms even in the face of disagreement. When their interests conflict with those of others, they must accept the legal determination of their rights and obligations. Moreover, the rule of law requires that the same standards apply equally to all. No one stands above the law, and every person must have access to its protection.

Waldron further distinguishes two senses in which the requirement of access must be secured. First, law must be epistemically accessible: it must exist as a public body of norms, promulgated so that citizens can study it, internalize it, understand what it requires, and use it as a reference for planning their lives, forming expectations, and resolving disputes. Second, legal institutions and procedures must be practically accessible so that ordinary citizens can assert their rights, settle conflicts, and protect themselves against abuses of public and private power.

¹⁷⁸ WALDRON, Jeremy. *The Rule of Law* [...].

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

These two dimensions of accessibility presuppose and reinforce widely accepted institutional requirements, such as an independent judiciary, accountability of public officials, transparency in governmental decision-making, and integrity of legal procedures. Beyond these widely accepted features, Waldron acknowledges that the precise requirements of the rule of law remain the subject of ongoing debate¹⁸¹. In this dissertation, however, these broad features are more relevant, which can be understood as resting on two sets of principles: formal and procedural.

Formal principles include the generality, clarity, publicity, stability, and prospectivity of the legal norms governing society¹⁸². They require that individuals be governed by general norms, rather than particular decrees; by norms established in advance, rather than imposed retrospectively; by norms publicly accessible, rather than concealed within the administration; and by norms whose meaning is sufficiently clear and determinate to ensure that those subject to them are not left at the mercy of official discretion.

Procedural principles, in turn, concern the processes by which those norms are applied and the institutional arrangements through which enforcement occurs¹⁸³. Waldron stresses that no one should be subjected to penalty, stigma, or serious loss at the hands of the state except through procedures that guarantee (i) a hearing before an impartial and independent court applying established legal norms based on formally presented evidence and argument; (ii) the right to representation by counsel; (iii) the opportunity to be present, confront and question witnesses, and advance legal arguments regarding the application of relevant norms; and (iv) a reasoned decision from the court, responsive to the evidence and arguments presented.

On Waldron's account, these principles find their clearest institutional expression in the separation of powers. The structure of divided authority gives practical effect to the formal and procedural principles of the rule of law by ensuring that political power is exercised through distinct, sequential, and accountable phases.

The formal principles of generality, clarity, publicity, stability, and prospectivity presuppose that the legislative function precedes both the executive and adjudicative functions¹⁸⁴. If this order were reversed, the executive could apply coercive measures without

¹⁸¹ WALDRON, Jeremy. The rule of law as an essentially contested concept. In: MEIERHENRICH, Jens; LOUGHLIN, Martin (ed.). **The Cambridge companion to the rule of law**. Cambridge: Cambridge University Press, 2021. p. 121-136.

¹⁸² WALDRON, Jeremy. The Rule of Law [...].

¹⁸³ *Ibid.*

¹⁸⁴ As mentioned in Chapter II, the issue of judicial lawmaking falls outside the scope of this dissertation. Although Waldron's well-known opposition to judicial review might suggest that he would reject those practices in categorical terms, this does not imply that the normative account he advances is, as such, incompatible with judicial lawmaking. A meaningful assessment would require a separate and more extensive inquiry into whether, and under

prior legal authorization, and the judiciary could decide cases without established norms to guide its reasoning or limit discretion. In these circumstances, there would hardly be a distinction between governmental functions — lawmaking, execution, and adjudication would merge into a single act of authority — subjecting individuals to the risk of tyranny.

Similarly, the procedural principles of the rule of law require that adjudication remain independent from the bodies that make the law and those that execute it, and that judicial decisions conform to preexisting legal norms. Without these safeguards, courts could determine enforcement procedures while adjudicating individual cases, leaving their judgments vulnerable to political influence. This arrangement would once again blur the distinction between governmental functions, exposing individuals to power unrestrained by law.

The “uncontested core”¹⁸⁵ of the rule of law is, therefore, most likely to flourish when political decisions emerge from an institutional process structured by the separation of powers, in which lawmaking precedes execution, and adjudication, subject to the guarantees of due process, is designated for disputes arising from implementation (Category I of Table 1). The separation of powers provides the institutional conditions under which the rule of law can take root, while the rule of law, in turn, provides the normative justification for this institutional arrangement¹⁸⁶.

In this sense, even if the 1988 Constitution had not explicitly enshrined the rule of law, one could still argue that the principle would be implicit within the Brazilian constitutional order, sustained by its commitment to the separation of powers in Article 2; Article 60, §4, III; and Title IV. From this perspective, a mere division of governmental functions does not by itself secure the rule of law, since its implementation also depends on how those functions are exercised and articulated. The further question, then, is what this arrangement specifically entails, or, more precisely, what standards it imposes on the exercise of political authority if the conditions of the rule of law are to be sustained. Although no fully consolidated normative

what conditions, judicial lawmaking might be regarded as legitimate. For an overview of Waldron’s position on judicial review, see WALDRON, Jeremy. The core of the case against judicial review. **The Yale Law Journal**, New Haven, v. 115, n. 6, p. 1346-1406, Apr. 2006. Available from: <https://www.jstor.org/stable/20455656>. Accessed on: Jan. 6, 2025.

¹⁸⁵ WALDRON, Jeremy. The rule of law [...], p. 121-136.

¹⁸⁶ “Some procedural requirements are also institutional in character: there must be courts and there must be judges whose independence of the other branches of government is guaranteed. This side of the rule of law is connected with the constitutional principle of the separation of powers. That principle is sometimes justified simply on the ground that it is unhealthy for power to be institutionally concentrated in society. But it also has a rule of law justification inasmuch as it assigns distinct significance to distinct stages in the making and application of laws” (WALDRON, Jeremy. The Rule of Law. In: ZALTA, Edward N.; NODELMAN, Uri (ed.). **The Stanford Encyclopedia of Philosophy**: Fall 2023 Edition. Stanford: Stanford University, 2023. Available from: <https://plato.stanford.edu/entries/rule-of-law/>. Accessed on: Aug. 12, 2025. Emphasis added).

theory of the separation of powers has yet emerged, Waldron argues that the principle implies at least two normative standards: articulated governance and integrity. These will be examined in Section III.1.2.

III.1.2 Articulated Governance and Integrity as Normative Standards

The normative standard of articulated governance not only divides the exercise of political authority into distinct functions, but also orders these functions in a specific sequence: the enactment of laws, their implementation, and the adjudication of disputes arising from that implementation. Building on this, Waldron argues that the standard of articulated governance has two important implications¹⁸⁷. First, political power cannot be reduced to a single, undifferentiated act of authority, such as the mere use of state coercion. Second, each stage of governance carries intrinsic significance, giving rise to distinct institutional concerns that must be addressed on their own terms.

When this standard is observed, governance assumes the form of a process that unfolds through successive stages¹⁸⁸. It begins with the state identifying a potential course of action. Policymakers then deliberate on its scope and formulate general norms, which are subsequently debated and adopted by elected representatives through legislative procedures. Once enacted, these norms are communicated to the public and the administrative agencies responsible for their enforcement. Citizens and firms are given time to internalize the new rules and adjust their conduct, while agencies incorporate them into regulatory practice and develop oversight mechanisms. Disputes or alleged violations may arise, in which case they are brought before the courts. Ultimately, the judiciary issues determinations that may require further enforcement or supervision to ensure compliance.

This incremental process, Waldron argues, gives concrete expression to the requirements of the rule of law¹⁸⁹. Principles such as clarity, publicity, stability of expectations, and due process are embedded in each stage of governance, embodying values of liberty, dignity, and respect while also creating opportunities for participation and adjustment. When these stages are skipped, blurred, or collapsed into one another, both the separation of powers and the rule of law are undermined. For Waldron, this reveals a deeper connection between the rule of law and the separation of powers: by ensuring that lawmaking, execution, and

¹⁸⁷ WALDRON, Jeremy. Separation [...], p. 456.

¹⁸⁸ *Ibid.*, p. 457-458.

¹⁸⁹ *Ibid.*, p. 458.

adjudication unfold in their proper sequence and under independent authority, the separation of powers enhances the conditions under which governmental action is more likely to be exercised lawfully.

At first glance, this formulation — that the legislative, executive, and judicial branches must each have a separate say before state power is applied to the individual — might resemble a version of checks and balances¹⁹⁰. Waldron, however, insists that this is not the case. The point is not that coercive action requires the joint concurrence of all governmental branches, but rather that each branch must fulfill its own distinctive function within the governance process. This is what he designates as the normative standard of integrity.

On this understanding, Waldron argues that the legislature should engage with its designated work — legislative work —, which does not extend to addressing the specific circumstances of any particular individual, X¹⁹¹. The executive, by contrast, is responsible for developing and implementing strategies to give effect to enacted legislation, a task that may require responding to X's concrete situation, as well as for exercising prosecutorial competences. The judiciary, in turn, should fulfill the adjudicative function of interpreting and applying the legal norms most appropriate to each case, thereby protecting X's fundamental rights and guarantees from undue restrictions, whether arising from private disputes or acts and omissions of the executive.

The separation of powers rests on the premise that each of these functions has its own integrity¹⁹². That integrity is contaminated when executive or judicial considerations affect the exercise of the legislative function; when legislative or executive considerations affect the performance of the judicial function; and when tasks specific to the executive function become entangled with those of the legislative and adjudicative functions.

As previously mentioned, Waldron's argument regarding the standard of integrity gains greater clarity when read in conjunction with the requirements identified by Kazai. Focusing on the equilibrium of parliamentary lawmaking, Kazai articulates four requirements derived from the principles of the separation of powers and the checks and balances¹⁹³: (i) the parliamentary legislative function; (ii) parliamentary autonomy; (iii) prohibition of usurpation of power; and (iv) checks and balances.

¹⁹⁰ WALDRON, Jeremy. Separation [...], p. 459.

¹⁹¹ *Ibid.*, p. 459-460.

¹⁹² *Ibid.*, p. 460.

¹⁹³ Following Vile and Waldron, Kazai conceives separation of powers and checks as distinct principles. For his account, see KAZAI, Viktor. **The equilibrium** [...], p. 31-32.

Before turning to these requirements, four clarifications are in order. First, as discussed in Chapter II, although the exercise of a governmental function necessarily involves the performance of specific competences, the two notions are not synonyms in this dissertation. The term function is reserved for the legislative, executive, and judicial (or adjudicative) functions of government, whereas competence refers to the specific prerogatives, powers, tasks, and obligations established by law. Accordingly, and in contrast to Kazai's approach, lawmaking is not treated in this study as synonymous with the legislative function, but rather as one of the legislative branch's typical competences, even if it is its most characteristic one.

Second, as also discussed in Chapter II, this dissertation adopts a "pure" conception of the separation of powers. The categorization developed in Section II.1.2 illustrates how this conception may be understood in the Brazilian context. On this view, the separation of powers encompasses both the typical competences of the legislative, executive, and judiciary branches — exercised within the classical sequence in which the legislative function precedes the executive and judicial functions — and the atypical, inward-looking competences aimed at preserving each branch's autonomy (Categories I and III in Table 1). Thus, the analysis focuses on the first three of Kazai's requirements, setting aside the issue of checks and balances.

Third, although Kazai develops these requirements by analyzing parliamentary lawmaking, their rationale is not confined to that competence. In his account, the requirements are grounded in the separation of powers as a principle derived from constitutionalism¹⁹⁴, rather than in the specific legal provisions governing legislative procedure in any particular jurisdiction. For this reason, the same standards may be understood as extending beyond the legislature to the executive and judicial functions and to the competences through which they are performed, as will be explored below.

Fourth, although Kazai refers to one of the requirements as the "prohibition of usurpation of power", his reasoning also implies a corresponding prohibition on relinquishment. As previously explained, and given that this dissertation does not treat competence and function as synonymous, the latter term more accurately captures what is at stake in both usurpation and relinquishment. In practice, particular competences may be delegated or exercised inadequately without necessarily undermining the separation of powers. The concern, therefore, is not how a particular competence is performed in a given situation, but whether a branch's core function is displaced, assumed by another branch, or abandoned altogether — developments that would be more likely to disrupt the separation of powers.

¹⁹⁴ KAZAI, Viktor. *The equilibrium* [...], p. 31-32.

Taking these considerations into account, Kazai's requirements concerning the separation of powers may be reformulated as follows: (i) the defining authority of each branch; (ii) institutional autonomy; and (iii) the prohibition of usurpation and relinquishment of function. Together, these requirements help clarify how governance unfolds when political authority operates in accordance with Waldron's normative standard of integrity. They serve as a starting point rather than a closed framework, leaving room for the articulation of additional criteria. The underlying premise is that whenever any of these conditions is compromised, the separation of powers — and, consequently, the rule of law — is placed at risk.

Drawing on Kazai, the defining authority of each branch may be understood as a layered concept. First, it refers to a subset of competences associated with each branch's core function. Second, these competences concern matters central to the organization of the polity. Third, they are reserved for each branch on an exclusive basis, in the sense that they are not, in principle, susceptible to delegation. Finally, this exclusivity is justified by the institutional characteristics of each branch — its organization, composition, purpose, and decision-making procedures —, which makes it especially suited to exercise those competences¹⁹⁵. Understood in these terms, the legislative, executive, and judiciary branches each hold exclusive competences of particular importance that give concrete expression to their respective core functions and are not, in principle, open to delegation, since their original allocation is grounded in each branch's institutional design.

Because Kazai focuses on parliamentary lawmaking, he notes that absolute lawmaking authority — free from interference by other governmental actors — has largely disappeared from contemporary democracies, as most constitutions now distribute lawmaking powers in multiple ways¹⁹⁶. One common technique, he observes, is to grant the executive branch several points of interference in the lawmaking process, such as the power of initiative, agenda-setting privileges, and veto power. Another technique is to divide elements of parliament's lawmaking competences both vertically and horizontally between several entities. This delegation may

¹⁹⁵ This understanding is based on the theory of functional suitability, or institutional adequacy, developed by the German Federal Constitutional Court. Where the constitutional text is silent or ambiguous, this theory provides an objective criterion for allocating competences to those institutions that are, by virtue of their organization, composition, purpose, and decision-making procedures, best equipped to perform them. According to Werner Heun, the appeal of this approach lies in its capacity to reconcile the notions of democratic legitimation of political authority, the restraint on its exercise through the rule of law, and the effective functioning of government (HEUN, Werner. **The Constitution of Germany: a contextual analysis**. Oxford; Portland: Hart Publishing, 2011. p. 86-87). Kazai, however, deploys this reasoning to explain why the 1958 French Constitution reserves certain lawmaking competences to the legislature only. This section seeks to adopt a similar approach in interpreting the allocation of certain competences under the 1988 Brazilian Constitution.

¹⁹⁶ KAZAI, Viktor. **The equilibrium** [...], p. 34.

originate directly from the constitution or be conferred by parliament itself on other branches. While the executive is the most frequent recipient of such authority, Kazai emphasizes that independent regulatory agencies and local governments also commonly exercise a share of lawmaking power.

Even so, Kazai observes that constitutions tend to reserve a decisive role for parliament in matters of particular importance. To illustrate this point, he turns to the 1958 French Constitution, which — although designed to “rationalize” the legislature by narrowing the scope of parliamentary law — preserved a legislative domain for parliament. This enduring principle, he notes, was captured succinctly by Michel Debré, one of the architects of the Fifth Republic, who famously declared: “[e]verything that affects public freedoms and individual rights (...) public powers and the basic structures of the State can only be regulated by parliamentary law”¹⁹⁷. Accordingly, Article 34 of the 1958 French Constitution assigns to the Parliament exclusive lawmaking competence over fundamental rights and liberties, the institutional organization of the State, citizenship, taxation, budgetary matters, and national defense¹⁹⁸. For Kazai, the point is that while the legislative function — here exercised through lawmaking competences — is no longer performed exclusively by Parliament, there remains a distinct domain in which Parliament retains, at least formally, exclusive authority.

The 1988 Brazilian Constitution, like many of its contemporary counterparts, distributes lawmaking competences in several ways. This dispersion is so extensive that, as discussed in Chapter II, Alexandre de Moraes concludes that exclusivity in the exercise of governmental functions no longer applies within Brazil’s constitutional order¹⁹⁹. His view is further supported by the fact that Articles 49, 51, and 52 — which define the exclusive competences of the Brazilian Congress, the Chamber of Deputies, and the Federal Senate — do not reserve any legislative subject matter to those bodies alone.

A closer examination of the constitutional framework, however, suggests a more nuanced picture. Rather than asserting legislative exclusivity outright — as Article 34 of the

¹⁹⁷ In the original: “[t]out ce qui touche aux libertés publiques et aux droits individuels ne peut être réglementé que par la loi. Tout ce qui touche aux pouvoirs publics et aux structures fondamentales de l’État ne peut être réglementé que par la loi. En d’autres domaines – attributions de l’État dans la vie économique et sociale notamment –, la loi fixe les principes. Le budget, les traités importants sont du domaine de la loi. Le Parlement doit ratifier l’état de siège. Il est seul compétent pour déclarer la guerre. Votre commission envisage qu’une loi organique pourra, après examen, étendre ce domaine; à ce correctif, qu’il faudra employer avec prudence, le Gouvernement ne fait pas obstacle, car il donnera une souplesse utile à un partage dont le principe est nécessaire”. For the full speech, see DEBRÉ, Michel. **Discours devant le Conseil d’État [Speech at the Council of State]**. [Paris], Aug. 27, 1958. Available from: <https://mjp.univ-perp.fr/textes/debre1958.htm>. Accessed on: Jan. 3, 2026.

¹⁹⁸ KAZAI, Viktor. **The equilibrium** [...], p. 35.

¹⁹⁹ MORAES, Alexandre de. **Direito** [...], p. 922.

1958 French Constitution appears to do²⁰⁰ —, the 1988 Brazilian Constitution expresses deference to the Legislative's defining authority through indirect means that formally ensure the Brazilian Congress's control over lawmaking in matters of particular significance.

Article 62 illustrates this approach. Although it empowers the President of the Republic, in cases of urgency and national relevance, to adopt provisional measures with the force of law, it requires that they be submitted immediately to the Brazilian Congress and forbids their issuance in matters concerning (i) nationality, citizenship, political rights, political parties, and electoral law; (ii) criminal law, criminal procedure, and civil procedure; (iii) the organization of the judiciary and the Public Prosecutor's Office, as well as the career structure and guarantees of their members; (iv) multi-year plans (*Planos Plurianuais*, PPAs), budgetary directives (*diretrizes orçamentárias*), budget (*orçamento*), additional and supplementary credits (*créditos adicionais e suplementares*), except as provided in Article 167, §3; (v) acts providing for the detention or seizure of property, savings, or other financial assets; (vi) matters reserved for supplementary law; and (vii) subjects already regulated by a bill approved by Congress and pending presidential sanction or veto.

Article 68 follows the same reasoning. Although it authorizes the President to enact delegated laws, this power remains contingent upon prior authorization from the Brazilian Congress. The delegation may not extend to acts within the exclusive competence of the Brazilian Congress or of either Houses, to matters reserved for supplementary law, or to legislation concerning (i) the organization of the judiciary and the Public Prosecutor's Office, including the career structure and guarantees of their members; (ii) nationality, citizenship, and individual, political, and electoral rights; or (iii) PPAs, budgetary guidelines, and budgets. Moreover, the delegation must be formalized through Congress's resolution defining its scope and duration, which may also provide for congressional review of the draft law. In such cases, the proposal is to be voted on in a single session, without amendments.

This arrangement is further reaffirmed in Article 49. Under item V, the Congress holds exclusive competence to suspend normative acts of the Executive branch that exceed the limits of regulatory authority or legislative delegation. Item XI extends this safeguard through a broader clause, affirming Congress's authority to preserve its lawmaking prerogatives against normative acts emanating from any other branch.

²⁰⁰ For an English translation of Article 34 of the 1958 French Constitution, see FRANCE. France 1958 (rev. 2008) [Constitution of the Fifth Republic]. **Constitute**, [S. l.], [2025]. Art. 34. Available from: https://www.constituteproject.org/constitution/France_2008. Accessed on: Dec. 29, 2025. For the original text with annotations, see FRANCE. Constitution du 4 octobre 1958. **Légifrance**, Paris, 10 Mar. 2024. Available from: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000571356/>. Accessed on: Dec. 29, 2025.

Taken together, these provisions, much like Article 34 of the 1958 French Constitution, reserve matters concerning fundamental rights and liberties, the institutional organization of the state, citizenship, and budgetary affairs to the Legislative branch. They do so, however, not by delineating an exclusive legislative domain, but by constraining the lawmaking competences of the Executive.

In the 1988 Constitution, the Legislative's defining authority over budgetary affairs is further reinforced by Article 166, which subjects budgetary bills to full parliamentary consideration. Under this provision, proposals concerning the multi-year plan, budgetary guidelines, the annual budget, and additional appropriations must be examined by both Houses of Congress in accordance with their joint rules of procedure. This process also includes the Legislative branch's power to amend the proposal, expressly provided for in Article 166, §§2 and 3. Therefore, the deliberation, amendment, and approval of the annual budget constitute legislative competences not susceptible to delegation.

More broadly, this constitutional arrangement reflects the understanding that the Legislative branch is institutionally best positioned to perform lawmaking in matters of particular importance. Congress is structured as a forum for aggregating and reconciling competing interests through representation and deliberation²⁰¹. Its procedures accommodate plurality and dissent while channeling disagreement toward collective decisions reached by majority rule. In principle, these features enable Congress to translate social disagreement into public policy endowed with democratic legitimacy.

Although Kazai's analysis focuses on the legislative function, its reasoning may also be extended to the executive sphere. Article 84 of the 1988 Constitution enumerates the President's exclusive prerogatives, which include, among others, the power to appoint and dismiss Ministers of State; to direct the federal administration with their assistance; to exercise supreme command over the Armed Forces; to appoint the Commanders of the Navy, Army, and Air Force; to promote general officers and assign them to positions corresponding to their rank; and to appoint or dismiss holders of federal public offices in accordance with the law.

While the Executive's defining authority is explicit in most of these cases, it remains implicit in a smaller subset. The Executive's defining authority over budgetary affairs falls

²⁰¹ FERNANDES, Jorge M.; DEBUS, Marc; BÄCK, Hanna. Unpacking the politics of legislative debates. *European Journal of Political Research*, [s. l.], v. 60, n. 1, p. 1-14, 2021. Available from: <https://doi.org/10.1111/1475-6765.12454>. Accessed on: Jan. 2, 2026; INÁCIO, Magna. Estrutura e funcionamento da Câmara dos Deputados no Brasil. [Structure and functioning of the Chamber of Deputies in Brazil]. In: MELO, Carlos Ranulfo; SÁEZ, Manuel Alcântara (ed.). *A democracia brasileira: balanço e perspectivas para o século XXI*. [Brazilian democracy: assessment and prospects for the 21st century]. Belo Horizonte: Editora UFMG, 2007. p. 199-235.

within this latter category and, as in the case of the Legislative branch, must be inferred from a contextual interpretation of the 1988 Constitution. Article 84, item IV, assigns to the President exclusive competence to issue decrees and regulations necessary for the faithful execution of legislation. This framework is complemented by Article 87, items II and IV, which authorize Ministers of State to exercise the powers conferred upon or delegated to them by the President, including the issuance of instructions for the implementation of laws, decrees, and regulations within their respective areas of responsibility.

Because the Constitution draws no distinction among different types of legislation for these purposes, this framework applies equally to budgetary laws. With respect to the annual budget law in particular, once Congress has set the general conditions governing public expenditure and the allocation of resources, the acts that give effect to those conditions are reserved to the Executive. These include both the establishment of internal procedures and deadlines and the disbursement of funds.

Upon closer examination, these competences relate to the separation of powers in different ways. In a first moment, the Executive establishes internal procedures and deadlines pursuant to the applicable legislation. This occurs through acts that are general and impersonal in character, whose primary purpose is to establish the conditions under which the Executive may perform its core function (Category III of Table 1). Although the issuance of such acts is an exclusive prerogative of the Executive, this authority rests primarily on the need to preserve the branch's control over its internal affairs.

The disbursement of funds, by contrast, occurs at a second stage and is carried out through concrete and individualized acts that apply legal norms to specific situations, producing direct and immediate effects. Such acts correspond to the exercise of the Executive's core function itself (Category I of Table 1). In this sense, their issuance is better explained under the notion of the Executive's defining authority in budgetary affairs.

Seen in this light, although the 1988 Constitution does not expressly list the disbursement of funds as an exclusive prerogative of the Executive, a contextual interpretation supports this understanding. As noted above, Articles 84, item IV, and 87, items II and IV, of the 1988 Constitution condition the Executive's authority to issue decrees and regulations (Category III of Table 1) on the need to ensure the performance of its core function (Category I of Table 1), which, in budgetary affairs, includes the disbursement of funds in accordance with the broader legal framework in place.

This interpretation is further reinforced by Articles 84, item XXIV, and 85, items VI and VII, of the 1988 Constitution. The former requires the President of the Republic to submit

annually to Congress the accounts of the previous fiscal year, which consist precisely of reports on the implementation of the annual budget law. The latter classify as impeachable offenses both acts that undermine the annual budget law itself and acts that breach the duty to ensure its faithful execution. This constitutional allocation of responsibility would be difficult to justify if the Executive did not hold exclusive authority over both stages of budget implementation.

The Judiciary likewise holds exclusive competences that give concrete expression to its core function. In addition to Articles 92 to 126, these competences are reflected, at a more abstract level, in Article 5. Item XXXV establishes that no law shall exclude any violation or threat of violation of a right from judicial review, indicating that the administration of justice cannot be withdrawn from the courts. Item XXXVIII, d, recognizes the institution of the jury, organized according to law, with competence to try intentional crimes against life, thereby reserving the adjudication of such offenses to a judicial body. Item LIII provides that no one shall be prosecuted or sentenced except by competent authority, and item LIV guarantees that no one shall be deprived of liberty or property without due process. Item LVII affirms that no one shall be considered guilty until a final and unappealable criminal conviction, and item LXV ensures that any unlawful detention shall be immediately released by judicial order.

Taken together, these provisions convey the Judiciary's purpose in the governance process, which is to give effect to the ideal that no individual should be subjected to penalty, stigma, or serious loss at the hands of the state except through procedures that ensure (i) a hearing before an impartial and independent court applying established legal norms based on formally presented evidence and argument; (ii) the right to representation by counsel; (iii) the opportunity to be present, to confront and question witnesses, and to advance legal arguments regarding the application of relevant norms; and (iv) a reasoned decision from the court, responsive to the evidence and arguments presented. These requirements — often regarded as the procedural dimension of the rule of law — are most likely to be realized within the organization and procedures of the judiciary, although the extent to which they are fulfilled inevitably varies across time and political circumstances²⁰².

²⁰² On how the realization of these ideals varies across time and political contexts, see BUSTAMANTE, Thomas; MEYER, Emilio Peluso Neder; BUSTAMANTE, Evanilda de Godoi. Luís Roberto Barroso's theory of constitutional adjudication: a philosophical reply. *American Journal of Comparative Law*, [s. l.], v. 69, n. 4, p. 798-832, 2021. Available from: https://openurl.ebsco.com/EPDB%3Aged%3A7%3A36326023/detailv2?sid=ebsco%3Aocu%3Arecord&id=ebsco%3Adoi%3A10.1093%2Fajcl%2Favac006&bquery=IS%200002-919X%20AND%20VI%2069%20AND%20IP%204%20AND%20DT%202021&page=1&link_origin=www.google.com&searchDescription=American%20Journal%20of%20Comparative%20Law%2C%202021%2C%20Vo%2069%2C%20Issue%204&crl=f. Accessed on: Dec. 19, 2025; MEYER, Emilio Peluso Neder; BENVINDO,

The analysis of defining authority leads to Kazai's second requirement: institutional autonomy²⁰³. Whereas defining authority concerns a branch's exclusive, non-delegable competences grounded in its core function, institutional autonomy addresses the conditions that make the exercise of that function possible. A branch can be said to control its core function only insofar as it retains autonomy over its internal affairs. In this regard, Kazai draws on the view of András Sajó and Renáta Uitz, who maintain that "an obvious outcome of the separation or division of powers is that each branch has the right to determine its own structure, organization, and personnel"²⁰⁴.

The competences associated with institutional autonomy are likewise not susceptible to delegation, although for reasons distinct from those underlying the defining authority. Whereas defining authority rests on considerations of functional suitability, institutional autonomy — consistent with the account developed in Chapter II, particularly with respect to atypical competences associated with the separation of powers (Category III of Table 1) — serves to protect the institutional independence of each branch.

Although Kazai develops this requirement in relation to parliamentary lawmaking, the same reasoning applies to the executive and judicial branches. Within legal limits, institutional autonomy entails control over internal organization, personnel, procedures, and operations, free from unjustified external interference. It is this autonomy that enables each branch to sustain the continuous performance of its respective core function.

Kazai's third requirement concerns the prohibition of both the relinquishment and the usurpation of function²⁰⁵. Whereas the first requirement delineates the sphere in which each branch enjoys, at least formally, exclusive authority over its core function, and the second addresses the institutional conditions necessary for its exercise, the third concerns the manner in which that function is carried out in practice.

Because this requirement relates primarily to how branches exercise their functions, it bears less directly on the present study. This dissertation focuses on the legal design of the reforms that introduced the mandatory execution of parliamentary amendments, rather than on how the Legislative and Executive branches have exercised the competences established by

Juliano Zaiden. **Supreme Constitutional Politics: Courts in the Political Dynamics of Brazil and the United States**. [Authors' manuscript]. Belo Horizonte: UFMG; Brasília, DF: UnB, 2025.

²⁰³ KAZAI, Viktor. *The equilibrium* [...], p. 36-37.

²⁰⁴ SAJÓ, András; UITZ, Renáta. **The Constitution of Freedom: an introduction to legal constitutionalism**. Oxford: Oxford University Press, 2017. p. 150.

²⁰⁵ KAZAI, Viktor. *The equilibrium* [...], p. 37-38.

those reforms. Questions concerning such exercise remain relevant and are therefore revisited in Section V.3, which outlines directions for future research.

Within this framework, Kazai states that each branch should remain confined to the exercise of its own function and, as a result, be insulated from undue control or influence over the others. In practice, however, circumstances may arise in which a branch either relinquishes its own function or usurps the function of another.

Relinquishment may occur directly, for example, when the legislature delegates broad or indeterminate lawmaking powers to the executive. More commonly, however, it occurs indirectly, through the manipulation of legislative procedures in ways that constrain the effective exercise of participatory rights by opposition members. As noted by Tímea Drinóczi and Agnieszka Bień-Kacała, in 2016, the Marshal of the Sejm of Poland excluded members of the political opposition from a parliamentary sitting and relocated the vote outside the main chamber to a venue with restricted access²⁰⁶. As a result, participation in the vote was effectively confined to members of the political majority.

Usurpation, by contrast, occurs when one branch assumes a function that belongs to another. Waldron points to early American constitutional experience as an illustration of the legislature encroaching upon the judicial function²⁰⁷. In the period following independence, James Madison and others expressed concerns that State legislatures were enacting resolutions directed at particular individuals — for example, measures to put specific persons out of business or confiscate their property. These concerns found expression in the Bills of Attainder Clauses of the 1787 United States Constitution, which essentially prohibited the enactment of laws imposing punishment on named individuals²⁰⁸.

Taken together, these three requirements lend greater precision to Waldron's normative standard of integrity. Integrity, in Waldron's sense, requires that each function retain its distinctive role and internal logic "because they have to fit together into the general articulated scheme of governance"²⁰⁹. Kazai's framework specifies the institutional conditions under which this integrity can be realized: the defining authority of each branch ensures that functions

²⁰⁶ DRINÓCZI, Tímea; BIEN-KACAŁA, Agnieszka. Illiberal constitutionalism: the case of Hungary and Poland. *German Law Journal*, [s. l.], v. 20, n. 8, p. 1140-1166, 2019. p. 1153. Available from: <https://www.cambridge.org/core/journals/german-law-journal/article/illiberal-constitutionalism-the-case-of-hungary-and-poland/01DA5EB12D2734935C659B96CE012BFD>. Accessed on: Dec. 30, 2025.

²⁰⁷ WALDRON, Jeremy. Separation [...], p. 460.

²⁰⁸ For the Bills of Attainder Clauses with annotations, see LEGAL INFORMATION INSTITUTE. Bills of Attainder: Art I.S9.C3.1 Bills of Attainder. *Legal Information Institute*, Ithaca, [2025]. Available from: <https://www.law.cornell.edu/constitution-conan/article-1/section-9/clause-3/bills-of-attainder>. Accessed on: Dec. 31, 2025.

²⁰⁹ WALDRON, Jeremy. Separation [...], p. 466.

remain distinct; institutional autonomy sustains each branch's capacity to exercise them; and the prohibition of usurpation and relinquishment of function requires each branch to do so in accordance with the law²¹⁰.

Considering the foregoing analysis, the separation of powers may be understood as a principle that, under Articles 2, 60, §4, III, and Title IV, of the 1988 Constitution, acquires a legal nature. Grounded in the rule of law, it differentiates political authority into at least three governmental functions, which are to be exercised in accordance with normative standards of articulated governance and integrity, through which the rule of law is more likely to be upheld.

In institutional terms, this differentiation is reflected in the existence of at least three branches, each assigned a distinct function and, for the most part, composed of separate personnel. The exercise of these functions follows a structured sequence, in which the legislative function precedes the executive, and the judicial function is exercised last. Within this framework, each branch is vested with exclusive, non-delegable competences derived from its core function, enjoys the autonomy necessary to perform that function, and exercises it in a manner that neither relinquishes its own function nor usurps that of another branch.

On this basis, the next section examines how the separation of powers — or, more precisely, the standards of articulated governance and integrity — is reflected in the budgetary process under the 1988 Constitution.

III.2 THE SEPARATION OF POWERS AND THE ANNUAL BUDGET LAW

In Brazil, the budgetary process rests on a comprehensive legal framework composed of constitutional, statutory, and infralegal norms. Its foundation is set out in Title VI, Chapter II, of the 1988 Constitution, headed “On Public Finance”, which covers Articles 163 to 169 and is complemented by Articles 37, 70, and 71. This framework is further developed by Law No.

²¹⁰ The prohibition of usurpation and relinquishment of function provides a useful reference point for the distinction between governmental functions and competences developed in Chapter II. It draws attention to the fact that the exercise of a formally attributed competence may, in substantive terms, amount to the performance of a function other than the one it is meant to serve. In such cases, concerns under the separation of powers may arise even though the branch formally remains within the scope of its attributed competences.

4320/1964²¹¹, Supplementary Law No. 101/2000²¹², and Resolution No. 1/2006 of the Brazilian Congress²¹³, as well as by additional regulatory acts issued by the executive and legislative branches.

Given the number of legal instruments involved and the diversity of procedures across stages and policy areas, a full reconstruction of the budgetary framework lies beyond the aims of this section. The overview that follows is therefore confined to identifying the budgetary bills provided for in the 1988 Constitution, outlining the stages through which they all proceed, and indicating the main deadlines for submission and approval, as well as the consequences of delay. The aim is to clarify the basic structure of the budgetary process, rather than to provide a comprehensive or technical account. On this basis, the analysis then turns to the annual budget law (*Lei Orçamentária Anual*, LOA), which constitutes the main object of the inquiry pursued in this study.

Article 165 of the 1988 Constitution establishes three types of budgetary law: the PPA, the Budget Guidelines Law (*Lei de Diretrizes Orçamentárias*, LDO), and the LOA. In broad terms, the PPA defines the government's strategies and programs over a four-year period; the LDO sets annual priorities and provides guidelines for preparing the budget; and the LOA estimates revenues and authorizes expenditures for the upcoming fiscal year, thereby converting the objectives outlined in the PPA into concrete actions consistent with the directives established in the LDO²¹⁴. Therefore, the content of each of these instruments is interconnected: the PPA informs the LDO, and both, in turn, shape the content of the LOA.

The budgetary process, or budgetary cycle, comprises at least four stages: (i) formulation, in which the executive drafts and submits the budgetary bills to the legislature; (ii)

²¹¹ BRASIL. Lei nº 4.320, de 17 de março de 1964. Estatui Normas Gerais de Direito Financeiro para elaboração e controle dos orçamentos e balanços da União, dos Estados, dos Municípios e do Distrito Federal. [Law No. 4.320 of March 17, 1964. Establishes general rules of financial law for the preparation and control of budgets and balance sheets of the Union, the States, the Municipalities, and the Federal District]. **Diário Oficial da União**: seção 1, Brasília, DF, p. 2745, 23 mar. 1964. Available from: https://www.planalto.gov.br/ccivil_03/leis/l4320.htm. Accessed on: Dec. 22, 2025.

²¹² BRASIL. Lei Complementar nº 101, de 4 de maio de 2000. Estabelece normas de finanças públicas voltadas para a responsabilidade na gestão fiscal e dá outras providências. [Supplementary Law no. 101 of May 4, 2000. Establishes public finance rules aimed at fiscal responsibility in public financial management and provides other provisions]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 137, n. 86-E, p. 1, 5 maio 2000. Available from: https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp101.htm. Accessed on: Dec. 22, 2025.

²¹³ BRASIL. Congresso Nacional. Resolução nº 1, de 2006-CN. Dispõe sobre a Comissão Mista Permanente a que se refere o § 1º do art. 166 da Constituição, bem como a tramitação das matérias a que se refere o mesmo artigo. [Resolution no. 1, of December 22, 2006-CN. Provides for the Permanent Joint Committee referred to in § 1 of Article 166 of the Constitution, as well as the procedure for matters covered by that article]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 143, n. 206, p. 4, 26 dez. 2006. Available from: <https://www.congressonacional.leg.br/web/cmo/atribuicoes-e-legislacao/resolucao-n-01-de-2006-cn>. Accessed on: Jan. 6, 2026.

²¹⁴ FARIA, Rodrigo Oliveira de. **Emendas** [...], p. 261.

deliberation and approval, in which the legislature debates, amends, and enacts them; (iii) execution of the enacted legislation; and (iv) oversight of their execution, primarily exercised by the legislature²¹⁵. Each budgetary bill proceeds through these stages according to its own timetable, concurrently with others.

The PPA bill must be drafted in accordance with Article 165, §1, of the 1988 Constitution, and Article 7 of Decree-Law No. 200/1967²¹⁶. Until revocation in 2019, Decree No. 2829/1998²¹⁷ also regulated its formulation and execution. Under Article 35, §2, I, of the ADCT, the PPA bill must be submitted to Congress by August 31 of the first year of each administration and approved by December 22 of that same year. Once enacted, the PPA remains in force for four years, covering the second year of the administration in which it is approved through the end of the first year of the subsequent administration.

The LDO bill must be prepared in accordance with Articles 165, §2, and 169, §2, of the Constitution, Article 4 of Supplementary Law No. 101/2000, and the PPA in force. Pursuant to Article 35, §2, II, of the ADCT, the LDO bill must be submitted to Congress by April 15 of the first year of each administration and approved by July 17 of that year. This timetable ensures that the LDO is in force during the second half of the first year of the administration, thereby guiding the preparation of the LOA for the following fiscal year. As a result, the LDO remains effective for approximately eighteen months, from mid-first year of the administration through the end of its second year.

The LOA bill must be prepared in accordance with Article 165, §§5 to 8, of the Constitution, Article 5 of Supplementary Law No. 101/2000, and the PPA and LDO in force. Under Article 35, §2, III, of the ADCT, the LOA bill must be submitted to Congress by August 31 of the first year of each administration and approved by December 22 of that same year. Once enacted, the LOA remains in force for a single fiscal year.

Taken together, these provisions indicate that, over the course of a four-year presidential term, an administration typically interacts with two PPAs, five LDOs, and five LOAs, whether

²¹⁵ *Ibid.*, p. 139.

²¹⁶ BRASIL. Decreto-Lei nº 200, de 25 de Fevereiro de 1967. Dispõe sobre a organização da Administração Federal, estabelece diretrizes para a Reforma Administrativa e dá outras providências. [Decree-Law No. 200, of February 25, 1967. Provides for the organization of the Federal Administration, establishes guidelines for Administrative Reform, and other provisions]. **Diário Oficial da União**: seção 1, Brasília, DF, supl., 27 fev. 1967. Available from: https://www.planalto.gov.br/ccivil_03/decreto-lei/del0200.htm. Accessed on: Jan. 7, 2026.

²¹⁷ BRASIL. Decreto nº 2.829, de 29 de outubro de 1998. Estabelece normas para a elaboração e execução do Plano Plurianual e dos Orçamentos da União, e dá outras providências. [Decree No. 2.829, of June 20, 1998. Regulates provisions of Decree-Law no. 200, of February 25, 1967, concerning the organization of federal public administration]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 136, n. 208-E, p. 9, 30 out. 1998. Available from: https://www.planalto.gov.br/ccivil_03/decreto/d2829.htm. Accessed on: Jan. 7, 2026.

through their formulation, approval, or execution. The tables below illustrate the ideal concurrent sequence of submission and approval of these budgetary instruments, using the years of the current administration (2023–2026) as a reference point.

Table 2 – Ideal timeline of budgetary instruments in the first year of the current administration (2023)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
PPA I (Jan. 2020 – Dec. 2023)	In force — applicable to LDOs I and II and LOAs I and II											
PPA II (Jan. 2024 – Dec. 2027)	Formulation							31 st	Deliberation			22 nd
LDO I (Jul. 2022 – Dec. 2023)	In force — applicable to LOA I											
LDO II (Jul. 2023 – Dec. 2024)	Formulation			15 th	Deliberation		17 th	In force — applicable to LOA II				
LOA I (Jan. 2023 – Dec. 2023)	In force											
LOA II (Jan. 2024 – Dec. 2024)	Formulation							31 st	Deliberation			22 nd

Source: elaborated by the author.

Table 3 – Ideal timeline of budgetary instruments in the second year of the current administration (2024)

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
PPA II (Jan. 2024 – Dec. 2027)	In force — applicable to LDOs III, IV, and V and LOAs III, IV, and V											
LDO II (Jan. 2024 – Dec. 2024)	In force — applicable to LOA II											
LDO III (Jul. 2024 – Dec. 2025)	Formulation			15 th	Deliberation		17 th	In force — applicable to LOA III				
LOA II (Jan. 2024 – Dec. 2024)	In force											
LOA III (Jan. 2025 – Dec. 2025)	Formulation							31 st	Deliberation			22 nd

Source: Elaborated by the author.

Table 4 – Ideal timeline of budgetary instruments in the third year of the current administration (2025)

	Jan.	Feb.	Mar.	Apr.	May	Jun	July	Aug.	Sep.	Oct.	Nov.	Dec.
PPA II (Jan. 2024 – Dec. 2027)	<i>In force — applicable to LDOs III, IV, and V and LOAs III, IV, and V</i>											
LDO III (Jul. 2024 – Dec. 2025)	<i>In force — applicable to LOA III</i>											
LDO IV (Jul. 2025 – Dec. 2026)	<i>Formulation</i>			15 th	<i>Deliberation</i>		17 th	<i>In force — applicable to LOA IV</i>				

LOA III (Jan. 2025 – Dec. 2025)	<i>In force</i>			
LOA IV (Jan. 2026 – Dec. 2026)	<i>Formulation</i>	31 st	<i>Deliberation</i>	22 nd

Source: elaborated by the author.

Table 5 – Ideal timeline of budgetary instruments in the fourth year of the current administration (2026)

	Jan.	Feb.	Mar.	Apr.	May	Jun	July	Aug.	Sep.	Oct.	Nov.	Dec.
PPA II (Jan. 2024 – Dec. 2027)	In force — applicable to LDOs III, IV, and V and LOAs III, IV, and V											
LDO IV (Jul. 2025 – Dec. 2026)	In force — applicable to LOA IV											
LDO V (Jul. 2026 – Dec. 2027)	Formulation			15 th	Deliberation		17 th	In force — applicable to LOA V				
LOA IV (Jan. 2026 – Dec. 2026)	In force											
LOA V (Jan. 2027 – Dec. 2027)	Formulation							31 st	Deliberation			22 nd

Source: elaborated by the author.

In practice, the constitutional deadlines governing the submission and approval of budgetary bills are not always observed²¹⁸. Delays in the enactment of the LOA, however, have not resulted in institutional paralysis since the promulgation of the 1988 Constitution²¹⁹. This is partly explained by the relationship between the LOA, which authorizes expenditures for a twelve-month fiscal year, and the LDO, which, in addition to setting the guidelines for the preparation of the LOA, also establishes the parameters for its execution.

In particular, the LDO typically includes a clause authorizing the provisional execution of expenditures (*execução provisória do projeto de lei orçamentária*) when the enactment of the LOA is delayed. Under this arrangement, the Executive may execute expenditures on a monthly basis, limited to one-twelfth of the total amount proposed in the pending LOA bill²²⁰. As a result, even when legislative approval is delayed for several months, budget execution may proceed incrementally, in accordance with the parameters set by the LDO, up to the total amount originally proposed²²¹.

²¹⁸ MATA, Paula Carolina de Oliveira Azevedo da. **Devido** [...], p. 214-215.

²¹⁹ FARIA, Rodrigo Oliveira de. **Emendas** [...], p. 151.

²²⁰ *Ibid.*

²²¹ For a recent example of a clause authorizing the provisional execution of expenditures proposed in a pending LOA bill, see Art. 70 in BRASIL. Lei nº 15.080, de 3 de dezembro de 2024. Dispõe sobre as diretrizes para a elaboração e a execução da Lei Orçamentária de 2025 e dá outras providências. [Law No. 15.080, of 30 December 2024. Provides for the guidelines of the drafting and execution of the 2025 Budget Law and other matters]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 162, n. 251, p. 1, 31 dez. 2024. Available from: https://www.planalto.gov.br/ccivil_03/_ato2023-2026/2024/lei/L15080.htm. Accessed on: Jan. 1, 2026.

This arrangement tends to preserve the continuity of public services and to reduce the risk of administrative disruption. In contrast to the government shutdowns observed in other systems, delayed approval of the annual budget in Brazil does not necessarily interrupt access to public resources, which may also help attenuate tensions between the Executive and Legislative branches during periods of political deadlock. The rationale and broader implications of this arrangement, however, remain open to further inquiry, particularly in circumstances where both the LDO and the LOA lapse prior to the enactment of their respective replacements.

Given the complexity of the budgetary cycle involving the PPA, the LDO, and the LOA, delimiting the scope is necessary. From this point forward, this dissertation concentrates on the LOA and on the manner in which the standards of articulated governance and integrity are reflected in its budgetary process. This focus provides a clearer analytical basis for assessing whether the reforms examined in Chapter IV are compatible with those standards.

To situate this inquiry, it is useful to briefly recall the content of these standards. As discussed in Section II.1.2, the separation of powers not only differentiates governmental functions but also arranges them in a specific order²²². The legislative function precedes execution, which in turn precedes adjudication. In practical terms, Congress enacts legislation, the Executive implements it, and the Judiciary adjudicates disputes arising from this implementation (Category I of Table 1).

When the normative standard of articulated governance is observed, governance takes the form of a process that unfolds through successive stages. It begins with the state identifying a potential course of action. Policymakers then deliberate on its scope and formulate general norms, which are subsequently debated and adopted by elected representatives through legislative procedures. Once enacted, these norms are communicated both to the public and to the administrative agencies responsible for their enforcement. Citizens and firms are given time to internalize the new rules and adjust their conduct, while agencies incorporate them into regulatory practice and develop oversight mechanisms. Disputes or alleged violations may arise, in which case they are brought before the courts.

The standard of integrity, in turn, requires that each function preserve its distinctive role and internal logic, precisely because they must fit together in the process described above²²³. To ensure that each function remains distinct, each branch is vested with exclusive competences

²²² WALDRON, Jeremy. Separation [...], p. 456-459.

²²³ *Ibid.*, p. 466.

of particular importance, which give concrete expression to its core function and are not, in principle, susceptible to delegation.

Integrity further presupposes that each branch enjoys a sufficient degree of autonomy in managing its internal affairs. Within legal limits, this autonomy encompasses the capacity to define internal structures, appoint personnel, establish internal procedures, and manage internal operations (Category III of Table 1). Such autonomy is a necessary condition for the performance of each branch's core function.

Finally, integrity also concerns the manner in which each branch exercises its core function. It requires that a branch perform its own function effectively, without relinquishing it or encroaching upon the functions of others. As noted earlier, this aspect primarily concerns how functions are exercised in practice and, therefore, bears less directly on the present study, which focuses on the legal design of the reforms that introduced the mandatory execution of parliamentary amendments, rather than on the subsequent exercise of the competences they established.

Considered jointly, these standards delineate the normative framework for assessing the separation of powers across the successive stages of the budgetary process — formulation, deliberation, execution, and oversight — as they apply to the LOA.

The formulation of the LOA bill corresponds to the first stage of the governance process, in which potential courses of action are identified and policymakers — elected officials, permanent members of each branch, and representatives of civil society, advocacy groups, and academia — deliberate on their scope. At this stage, the Judiciary and the Legislative branches prepare their respective budgetary proposals, with the participation of their own policymakers, and submit them to the Executive branch, which is constitutionally precluded from altering their content²²⁴. The Executive follows a similar procedure with respect to its own budget, consolidates its proposal with those of the Legislative and the Judiciary, and drafts the bill as a whole. The bill is then submitted to Congress by August 31.

The deliberation, amendment, and approval of the bill constitute the second stage of the governance process, in which the draft is debated and adopted by elected representatives through legislative procedures. From the perspective of the standard of integrity, the assessment of this stage turns on three elements. First, the authority to deliberate on, amend, and approve the bill must rest with Congress. As discussed previously, a contextual interpretation of Articles

²²⁴ BRASIL. [Constituição (1988)]. **Constituição** [...], arts. 51, item IV; 52, item XIII; 99, §§1-5; 127, §§3-6; 134, §2; 165, §5.

49, items V and XI, 62, 68, and 166, head paragraph, and §§ 2 and 3, of the 1988 Constitution, supports the view that these competences are exclusive and non-delegable. Second, Congress must enjoy sufficient institutional autonomy to perform them. Third, they must be exercised effectively, without entailing either the relinquishment of the legislative function or the usurpation of another governmental function.

The implementation of the LOA corresponds to the third stage of the governance process, when the enacted norms are put into effect. From the perspective of the standard of integrity, the assessment of this stage likewise turns on three elements. First, the authority to implement the LOA must rest with the Executive branch. A contextual interpretation of Articles 84, items IV and XXIV, 85, items VI and VII, and 87, items II and IV, of the 1988 Constitution, is consistent with the understanding that these competences are exclusive and non-delegable. Second, the Executive must enjoy sufficient institutional autonomy to perform them. Third, implementation must be carried out effectively, without entailing either its relinquishment or the usurpation of another governmental function.

The final stage of the budgetary process — oversight — differs from the preceding stages. As discussed in Chapter II, financial oversight is traditionally associated with the legislative function and consists primarily in the scrutiny of executive action or omission in these matters (Category II of Table 1). For analytical purposes, this phase may be divided into two distinct moments. In the first, the Executive is legally required to submit reports to the Brazilian Congress²²⁵. In the second, the Legislature examines and deliberates on those reports, usually with the support of oversight bodies, such as the Federal Court of Accounts (*Tribunal de Contas da União*, TCU)²²⁶.

These two moments relate to the separation of powers in different ways. The first is more directly connected to the normative account advanced in this dissertation, as it derives from the executive function and reflects legal obligations imposed on the Executive. The second — legislative deliberation on the reports — operates more clearly within the logic of checks and balances, insofar as it entails interbranch restraint and accountability. In light of the scope of this study, the analysis therefore prioritizes the first moment of oversight.

This delimitation is further supported by institutional practice. Although the TCU has consistently fulfilled its constitutional duty by issuing annual opinions on the presidential

²²⁵ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 84.

²²⁶ *Ibid.*, arts. 49, IX, and 70-75.

accounts, Congress has not formally deliberated on those accounts since 2002²²⁷. While such persistent inaction could be framed as an unconstitutional omission, addressing that issue would require a distinct inquiry into the functioning of checks and balances and, therefore, falls outside the scope of this study.

Accordingly, for this analysis, the first moment of the oversight phase — the Executive's duty to render reports — will be treated as part of the execution phase. This approach reflects both the administrative character of that duty and the determinacy of its legal consequences. As discussed in Section III.1.2, failure to comply is constitutionally classified as a presidential impeachable offense²²⁸, reinforcing its normative status as an executive obligation arising from the implementation of the LOA.

In light of the foregoing, the manner in which the normative standards of the separation of powers are reflected in the LOA's budgetary process may be summarized as follows. First, all branches participate in the formulation of the LOA bill. At this stage, the Legislative and Judicial branches exercise atypical competences by preparing and submitting their respective budgetary proposals (Category III of Table 1). The Executive, in turn, prepares its own proposal, consolidates those of the other branches, and exercises an atypical competence by drafting the bill as a whole (Category III of Table 1).

The subsequent stage corresponds to the exercise of the legislative function, as Congress deliberates on, amends, and approves the LOA through legislative procedures (Category I of Table 1). Once enacted, the process moves to the execution phase, in which the Executive performs its function by implementing the LOA and submitting the mandatory reports to Congress and oversight bodies (Category I of Table 1).

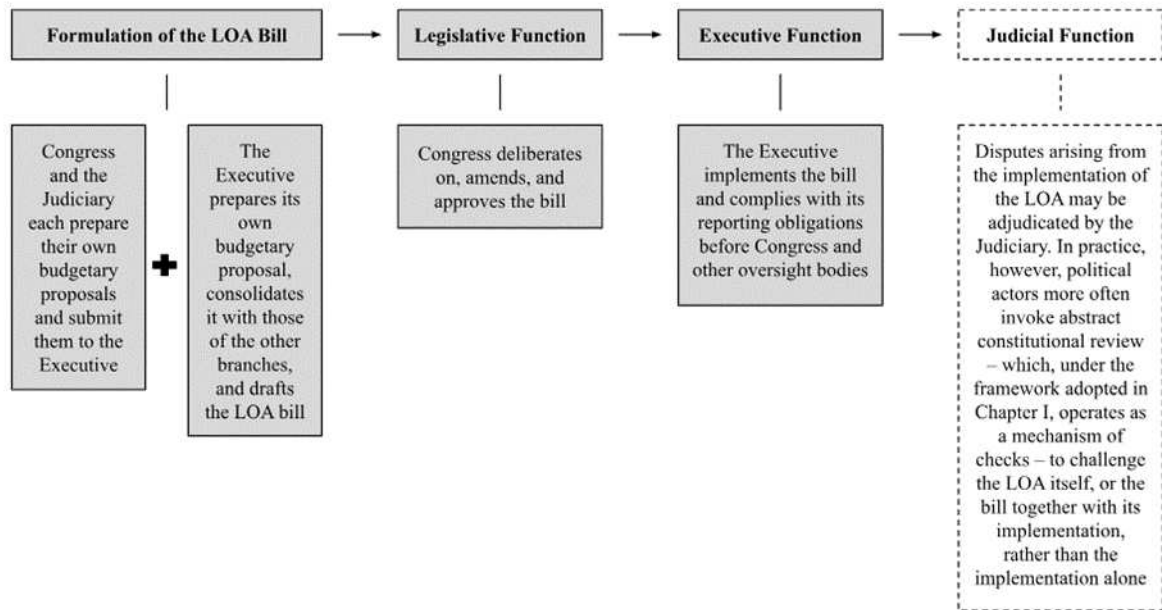
Finally, disputes arising from the implementation of the LOA may be brought before the courts. In practice, however, political actors frequently resort to abstract constitutional review to challenge the LOA itself, or the LOA with aspects of its implementation, rather than contesting specific execution measures in isolation. As discussed in Chapter II, abstract constitutional review operates more clearly in the logic of checks (Category II of Table 1). For this reason, such forms of judicial intervention fall outside the scope of the present analysis.

²²⁷ For information on the status of these accounts, as well as the opinions issued by the TCU and by Congress's Joint Committee on Plans, Public Budgets, and Oversight (*Comissão Mista de Planos, Orçamentos Públicos e Fiscalização*, CMO), see CONGRESSO NACIONAL. Contas da Presidência. [Presidential accounts]. **Congresso Nacional**, Brasília, DF, [2025]. Available from: <https://www.congressonacional.leg.br/materias/materias-orcamentarias/contas-da-presidencia>. Accessed on: Jul. 6, 2025.

²²⁸ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 85, VI-VII.

Against this background, Figure 4 illustrates how the normative standards of articulated governance and integrity are reflected in the LOA's budgetary process under the 1988 Constitution.

Figure 4 – Separation of powers and the LOA



Source: elaborated by the author.

With this framework in place, the inquiry turns to how the reforms that introduced the mandatory execution of parliamentary amendments relate to the normative standards of the separation of powers. Given the widely shared understanding that these reforms originated in an autonomous legislature, seeking greater control over resource allocation, the account developed in this chapter narrows the analysis to two specific points.

The first concerns institutional autonomy, one of the dimensions of integrity. As argued earlier, integrity presupposes that each branch retains sufficient control over its internal affairs to perform its core function. This includes the capacity to prepare its own budgetary proposal without undue external interference. The reforms would raise concerns under this standard if they enabled one branch to determine, revise, or condition the budgetary proposal of another, thereby undermining the autonomy required for the exercise of their respective functions. This would be the case, for example, if the Legislative branch were able to formulate the Executive's budgetary proposal.

From a separation-of-powers perspective, this conclusion rests on the distinction between formulating the Executive's budgetary proposal and deliberating on it once submitted.

Formulation presupposes influence over the Executive's internal affairs, including its organization, personnel, procedures, and operations. If such competence were attributed to the Legislative branch, the reforms would risk collapsing the distinction between the stages of formulation and deliberation in the budgetary process. That collapse would, in turn, open the way for congressional encroachment upon the execution stage by undermining the institutional autonomy through which the Executive performs its core function.

The second point concerns defining authority, another element of integrity. As argued throughout this chapter, each branch is vested with exclusive and non-delegable competences grounded in its core function. The reforms would conflict with this dimension if they resulted in the reallocation of such competences from one branch to another, thereby blurring the distinction between governmental functions. This concern would arise, for instance, if the Legislative branch were to assume responsibility for the implementation of the LOA, in tension with a contextual interpretation of Articles 84, items IV and XXIV, 85, items VI and VII, and 87, items II and IV, of the 1988 Constitution.

Although this point of tension could, in conceptual terms, be further subdivided, the analysis proceeds with defining authority as its primary frame. The distinction discussed in Section III.1.2 between the two moments that compose budget implementation would, in principle, allow the establishment of internal procedures and deadlines to be examined under the heading of institutional autonomy, and the disbursement of funds under the heading of defining authority. The present study does not develop this subdivision, however, as it is confined to the formal aspects of the reforms.

Within these limits, the analysis does not extend to determining whether the Executive continued, in practice, to perform concrete acts of disbursement, but instead considers whether the reforms may have affected its legal capacity to do so. As noted earlier, the 1988 Constitution conditions that capacity on the need to ensure the performance of the Executive's core function. Accordingly, where the Executive retains authority to issue decrees and regulations establishing internal procedures and deadlines for the faithful execution of legislation, including the LOA, it becomes difficult, at the level of institutional design, to infer that it has been deprived of authority over the disbursement of funds.

In this sense, institutional autonomy is invoked not as an independent object of assessment, but as an indicator of defining authority, given the methodological limits of the inquiry. The focus on defining authority also aligns with the nature of the objections raised by the reforms, which appear to be directed at the formal allocation of exclusive and non-delegable competences that give expression to the Executive's core function in budgetary matters.

Although the same scenario could also be described in terms of usurpation, that concept is more closely concerned with the exercise of competences in practice than with their formal reconfiguration. Given that the present analysis is confined to the latter, defining authority provides a more appropriate analytical lens for the assessment that follows.

Taken together, these two points translate the abstract standards of articulated governance and integrity into concrete criteria for assessing whether the reforms introducing the mandatory execution of parliamentary amendments to the annual budget are compatible with the separation of powers. On this basis, the following chapter examines those reforms, asking whether, and to what extent, they compromise the Executive's institutional autonomy or defining authority in the LOA's budgetary process.

III.3 PARTIAL CONSIDERATIONS

This chapter advanced a normative account of the separation of powers that has, so far, proven compatible with Articles 2, 60, §4, III, and Title IV, of the 1988 Constitution. Under this account, the separation of powers is understood as a principle grounded in the rule of law that differentiates political authority into at least three governmental functions. These functions are to be exercised in accordance with the normative standards of articulated governance and integrity, through which the rule of law is more likely to be upheld.

In institutional terms, this differentiation is reflected in the existence of at least three branches, each assigned a distinct function and, for the most part, composed of separate personnel. The exercise of these functions follows a structured sequence, in which the legislative function precedes execution, and adjudication is exercised last. In this framework, each branch is vested with exclusive and non-delegable competences derived from its core function, enjoys sufficient autonomy to perform that function, and is expected to exercise it effectively, without relinquishment or usurpation.

Against this background, these standards are reflected in the LOA's budgetary process in the following manner. First, all branches participate in the formulation of the LOA bill. The Legislative and Judicial branches prepare and submit their respective budgetary proposals to the Executive. The Executive, in turn, prepares its own proposal, consolidates it with the others without alteration, and drafts the bill as a whole. Subsequently, Congress deliberates on, amends, and approves the bill through legislative procedures. Once enacted, the process moves to the execution phase, in which the Executive performs its core function by implementing the LOA and submitting the corresponding reports to Congress and oversight bodies.

In light of this institutional arrangement, and of the understanding that the reforms introducing mandatory parliamentary amendments originated in an autonomous Legislature seeking greater control over the allocation of public resources, two potential points of tension with the normative standard of integrity can be identified.

The first concerns institutional autonomy. This dimension of integrity requires that each branch retain sufficient control over its internal affairs to perform its core function, including the capacity to prepare its own budgetary proposal without undue external interference. The reforms would raise concerns under this dimension if they enabled the Legislature to formulate the Executive's budgetary proposal.

The second concerns defining authority. This dimension of integrity presupposes that each branch is vested with exclusive and non-delegable competences grounded in its core function. The reforms would raise concerns under this dimension if they entailed the transfer of authority for the implementation of the LOA to the Legislature, in tension with a contextual interpretation of Articles 84, items IV and XXIV; 85, items VI and VII; and 87, items II and IV, of the 1988 Constitution.

On this basis, Chapter IV argues that the reforms introducing the mandatory execution of parliamentary amendments do not, in themselves, violate the separation of powers. Following these reforms, each branch retained the competence to prepare its own budgetary proposal, while the Executive retained the authority to consolidate those proposals without alteration and to draft the LOA bill as a whole. Congress continues to deliberate on, amend, and approve the LOA, and the Executive remains responsible for its execution and for submitting the corresponding reports to Congress and to oversight bodies.

The principal innovation introduced by the reforms lies instead in the constraint they impose on executive discretion over the so-called discretionary expenditures. When parliamentary amendments to the LOA are adopted in accordance with the law, the Executive may withhold their execution only in proportion to other discretionary expenditures. In practical terms, this means that the Executive can no longer selectively withhold expenditures aligned with congressional preferences while executing those aligned with its own. Although this shift curtails a longstanding feature of Brazil's presidentialism, it does so without necessarily infringing upon the separation of powers. This argument is developed further in the following chapter.

IV THE MANDATORY EXECUTION OF PARLIAMENTARY AMENDMENTS TO THE ANNUAL BUDGET LAW (“*ORÇAMENTO IMPOSITIVO*”)

The 1967 Constitution, enacted under the authoritarian regime that governed Brazil from 1964 to 1985, substantially expanded the Executive’s prerogatives, granting it exclusive authority over legislation in matters of national security and public finance²²⁹. Within this arrangement, Congress was largely confined to approving or rejecting proposals submitted by the Executive, without the possibility of amending them.

Accordingly, the Executive held exclusive initiative over budgetary legislation, including the power to submit modifying messages (*mensagens modificativas*), as well as responsibility for maintaining an internal control system to oversee the execution of work programs (*programas de trabalho*) and the budget.

The Legislature, for its part, was tasked with examining the PPAs and the annual budget, but was prohibited from introducing provisions unrelated to the authorization of expenditures or the estimation of revenues, as well as from reallocating funds²³⁰. These constraints were reinforced by Article 67, §1, of the 1967 Constitution, which barred parliamentary amendments that increased total expenditure or the expenditure of any agency, project, or program, or that altered their amount, nature, or purpose. In addition, if Congress failed to return the budget bill within four months, it would be automatically promulgated as law.

This institutional design substantially hollowed out legislative participation in the budgetary process²³¹. Although formally preserved for much of the period, Congress functioned primarily as an instrument of political legitimation for the regime. In practice, it ceased to perform a meaningful deliberative role, operating instead as a body largely limited to ratifying executive decisions.

In this setting, Congress was gradually transformed into a space for mediation between the upper and middle levels of the state bureaucracy and the demands of electoral clienteles, whose support was decisive to renewal mandates²³². Legislative activity increasingly shifted

²²⁹ FARIA, Rodrigo Oliveira de. **Emendas** [...], p. 131-132.

²³⁰ *Ibid.*

²³¹ *Ibid.*, p. 133.

²³² During the dictatorship, political institutions were preserved in a partial and selective manner. Presidents and governors, for instance, were chosen by the legislatures, while the multiparty system was abolished, allowing only two parties to operate: the National Renewal Alliance (*Aliança Nacional Renovadora, ARENA*), which supported the regime, and the Brazilian Democratic Movement (*Movimento Democrático Brasileiro, MDB*), which operated as a controlled opposition. Throughout this period, electoral rules were repeatedly modified to accommodate the interests of the incumbents. For an overview of these arrangements, see NICOLAU, Jairo. Regime militar (1964–

away from deliberation over public policy and toward the pursuit of targeted benefits, displacing debates over the allocation of resources with competition for access to them.

During the 1987–1988 National Constituent Assembly (*Assembleia Nacional Constituinte*, ANC), the restoration of congressional prerogatives in budgetary matters became the subject of intense debate²³³. These discussions were shaped by multiple concerns: avoiding a return to the institutional deadlocks that preceded the democratic breakdown of 1964; preventing Congress from becoming an obstacle to governability; and enabling a more responsible participation of the Legislature in the budgetary process.

At the core of this debate lay the question of which branch should prevail in the allocation of public resources²³⁴. This issue admits no predetermined resolution, as there is no single model of budgetary dominance. Consolidated democracies have adopted markedly different institutional arrangements, and even in otherwise stable systems — such as that of the United States until recently —, executive–legislative relations in budgetary matters have been marked by persistent tensions.

In response, the 1988 Constitution significantly expanded Congress’s role in budgetary decision-making. Legislative deliberation was extended beyond the Fiscal Budget to include the Social Security Budget and the Investment Budget of State-Owned Enterprises²³⁵. Parliamentary participation was further strengthened through the creation of the PPA and the LDO, instruments whose deliberation was to take place broadly within the legislative arena. Oversight mechanisms were likewise reinforced, both through congressional committees and the expansion of TCU’s powers, including authority to assess the merits and quality of public spending.

The 1988 Constitution also authorized parliamentary amendments to the LOA, provided that the necessary funding sources were indicated²³⁶. Amendments affecting mandatory expenditures — such as personnel, debt service, and constitutional transfers — were limited to the correction of technical errors or omissions. All amendments were required to be consistent with the PPA and the LDO, thereby binding the Legislature to the priorities it had itself approved and encouraging a more responsible exercise of its budgetary powers.

1985). [Military regime (1964–1985)]. In: NICOLAU, Jairo. **Eleições no Brasil:** do Império aos dias atuais. [Elections in Brazil: from the Empire to the present day]. Rio de Janeiro: Zahar, 2012.

²³³ FARIA, Rodrigo Oliveira de. **Emendas** [...], p. 138.

²³⁴ *Ibid.*

²³⁵ *Ibid.*, p. 139.

²³⁶ *Ibid.*, p. 142–145.

Despite these advances, the post-1988 framework did not fully abandon elements of the prior model²³⁷. Although Congress was no longer subject to rigid deadlines for voting on the budget and acquired the ability to override presidential vetoes by an absolute majority, its role remained constrained by strict rules on amendments, by the prohibition on increasing expenditures, and by the centralization of budgetary negotiations within the Joint Committee on Plans, Public Budgets, and Oversight (*Comissão Mista de Planos, Orçamentos Públicos e Fiscalização*, CMO). The resulting design sought to expand legislative participation while preserving safeguards for executive governability.

Centralization in the CMO, while strengthening Congress's bargaining capacity, also reduced the number of veto points available in negotiations with the Executive²³⁸. Moreover, amendments approved through this process were not subject to mandatory execution, functioning instead as authorizations²³⁹. This conferred substantial discretion upon the President in the implementation of these amendments, allowing them to be used as instruments for coalition formation and maintenance.

More specifically, in multiparty presidential systems such as Brazil's, Presidents typically rely on a combination of agenda-setting, cabinet, party, budgetary, and informal powers to overcome their minority status in Congress²⁴⁰. When these instruments prove insufficient, governmental initiatives tend to stall, increasing the risks of political instability and, in extreme cases, premature removal from office.

Against this background, the reforms leading to the mandatory execution of parliamentary amendments can be understood as part of a longer trajectory of executive–legislative relations in budgetary governance. For analytical purposes, the motivations and justifications underlying these reforms may be grouped into three interrelated categories.

The first concerns the Executive's control over both the formulation and implementation of the budget during the 1964–1985 regime. Although legislators had access to resources — often acting as intermediaries between segments of the state bureaucracy and the demands of their electoral constituencies —, such access depended on executive discretion and operated within a framework of institutional subordination. While the 1988 Constitution substantially altered the formal allocation of budgetary powers, elements of this dynamic persisted under the

²³⁷ FARIA, Rodrigo Oliveira de. **Emendas** [...], p. 153.

²³⁸ *Ibid.*, p. 148-149.

²³⁹ *Ibid.*, p. 168-169.

²⁴⁰ For a more detailed discussion on these dynamics, see CHAISTY, Paul; CHEESEMAN, Nic; POWER, Timothy J. **Coalitional Presidentialism in Comparative Perspective: Minority Presidents in Multiparty Systems**. Oxford: Oxford University Press, 2018.

logic of coalitional presidentialism, in which executive control over budget execution continued to operate as an instrument for managing legislative support.

The second category concerns the electoral incentives associated with resource allocation²⁴¹. Although there is limited evidence of a direct relationship between resource allocation and electoral performance, projects financed through parliamentary amendments may generate benefits for economic actors through the public contracts they entail. The targeted allocation of resources may thus facilitate the formation of ties with such actors, which can be relevant for campaign financing. In addition, legislators' perceptions that directing resources to their support base is relevant for reelection — regardless of whether such perceptions are empirically substantiated — may themselves have contributed to demands for greater legislative influence over the budget.

The third category relates to Congress's institutional design. Although both the President and members of Congress are directly elected by popular vote, the 1988 Constitution assigns to the Legislature the prerogative of representing citizens and the states, as provided in Articles 45 and 46. This prerogative presupposes meaningful congressional participation in the budgetary process, both in defining the criteria and priorities governing the allocation of public resources and in overseeing their execution. Such oversight encompasses the review of presidential accounts and the assessment of compliance with the broader legal framework in place, including the authority, exercised in a representative capacity, to approve those accounts even in instances of deviation from legal requirements, where such deviations are deemed justified²⁴².

The explanatory memorandum to the Proposed Constitutional Amendment No. 22/2000 reflects elements of these considerations. Introduced by Senator Antônio Carlos Magalhães and co-sponsored by other members of Congress, the proposal is one of the earliest formal initiatives to establish the mandatory execution of parliamentary amendments to the LOA²⁴³. After the consideration of successive substitute texts, it was ultimately promulgated as EC No. 86/2015, which is examined in Section IV.1.3 of this chapter. The excerpt below reproduces the relevant passage of the accompanying explanatory memorandum:

²⁴¹ FARIA, Rodrigo Oliveira de. **Emendas** [...], p. 161-163.

²⁴² As explained in Chapter II, Articles 49, IX, and 71 of the 1988 Constitution vest Congress with the authority to review the President's annual accounts and other reports submitted by the Executive. On this basis, Congress may approve such accounts and reports even in the face of technical opinions recommending their rejection. This authority, however, does not preclude oversight bodies from conducting investigations or pursuing accountability, in accordance with the principle of the independence of proceedings (*princípio da independência das instâncias*), under which political, administrative, civil, and criminal responsibility are assessed separately, with cross-effects arising only where provided by law.

²⁴³ FARIA, Rodrigo Oliveira de, *op. cit.*, p. 302.

Our budgetary laws, as they have been put into practice, amount to little more than a grand fiction. Little, if anything, has resulted from the efforts undertaken by the competent bodies to assemble a coherent bill for submission to the Congress; the time devoted by party leaders to interminable negotiations to reconcile the fair and legitimate demands of the congressional caucuses (*bancadas*). None of this is considered by the Executive branch to implement the budget approved by Congress. Indeed, the budget has frequently served as an instrument of political bargaining, insofar as decisions regarding what is actually executed depend on the scrutiny of the government's economic team. It is understandable — and even acceptable — that economic authorities should make prudent use of discretionary power to adjust the budgetary schedule to the resources available for its execution. However, when the exercise of this prerogative renders discretion arbitrary, it becomes truly intolerable, as it aggrandizes the powers of ministers — or even of mere bureaucrats — by subjecting the decisions of the Congress to their will. In their origin, budgetary laws are instruments of political control exercised by the Legislative branch over the Executive branch. It is the exclusive competence of the Legislature to authorize, on behalf of society, the Executive branch to collect revenues created by law and to carry out the expenditures necessary for the provision of public services and other activities toward the collective well-being. Accordingly, the government's program of action, embodied in the annual budget, rather than expressing a unilateral vision contained in the document submitted by the Executive, must be tempered by a component that reflects the perspective of the Legislative branch, so that, taken as a whole, it embodies the joint commitment of both branches to the nation. Without it, we are confronted with [...] the usurpation of the legitimate prerogatives of one of the branches of the Republic, which is intolerable under a democratic regime²⁴⁴.

In this context, Section IV.1 outlines the portion of the federal budget affected by the reforms. Sections IV.1.1, IV.1.2, and IV.1.3 then trace the reform process, detailing the

²⁴⁴ In the original: “[a]s nossas leis orçamentárias, tal como vêm sendo postas em prática, não passam de uma grande ficção. Pouco, ou nada, valem os esforços de mobilização dos órgãos competentes para montagem de um projeto coerente a ser encaminhado ao Congresso Nacional; o tempo despendido pelas lideranças partidárias em intermináveis negociações para conciliar os justos e legítimos pleitos das bancadas com assento no Congresso Nacional, nada disso é levado em consideração pelo Poder Executivo na hora de executar a programação orçamentária aprovada pelo Congresso Nacional. Na verdade, essa programação muitas vezes tem se prestado como instrumento de barganha política. Isso ocorre na medida em que a definição do que realmente deve ser executado depende do crivo da zelosa equipe econômica do governo. É até compreensível e aceitável que as autoridades econômicas primem pelo uso do poder discricionário para ajustar a programação do orçamento aos meios disponíveis para executá-la. Entretanto, quando o uso dessa faculdade transforma em arbitrário o poder discricionário, ela realmente se torna insuportável, pois hipertrofia os poderes de Ministros – ou de simples burocratas – submetendo as decisões do Congresso Nacional aos desígnios desses mesmos agentes públicos. Na sua origem, as leis orçamentárias constituem instrumento de controle político do Poder Legislativo sobre o Poder Executivo. É do Poder Legislativo a competência privativa para autorizar, em nome da sociedade, o Poder Executivo a arrecadar as receitas – criadas em lei – e realizar as despesas necessárias ao funcionamento dos serviços públicos e outras que visem ao bem-estar coletivo. Logo, o programa de trabalho do governo, consubstanciado na Lei Orçamentária Anual, em vez de apresentar uma visão unilateral, expressa no documento encaminhado pelo Poder Executivo, deve ser temperado com componente que consigne a visão do Poder Legislativo, refletindo, no conjunto, o compromisso de ambos os Poderes com a nação. Se isso não ocorrer, nos deparamos com (...) [a] usurpação das legítimas atribuições de um dos poderes da República, o que é intolerável num regime de plenitude democrática”. MAGALHÃES, Antonio Carlos *et al.* **Proposta de Emenda à Constituição nº 22, de 2000**. Altera disposições da Constituição Federal, tornando de execução obrigatória a programação constante da lei orçamentária anual. [Proposed Constitutional Amendment No. 22 of 2000. Amends provisions of the Federal Constitution, making the annual budget law's allocations mandatory for execution]. Brasília, DF: Senado Federal, 6 jun. 2020. p. 4. Available from: <https://legis.senado.leg.br/sdleg-getter/documento?dm=3837001&ts=1720446504490&disposition=inline>. Accessed on: Dec. 19, 2025.

normative changes that culminated, in 2019, in the consolidation of the mandatory execution regime for parliamentary amendments to the LOA. This chapter is confined to an analysis of these normative developments and does not examine their implementation, which is briefly addressed in Section V.3 of this dissertation, nor the broader political context, which spans more than two decades of recent Brazilian politics and would require a distinct treatment.

Section IV.2 examines whether the reforms may be understood as falling within either of the two scenarios outlined in Chapter III: a compromise of the Executive's institutional autonomy or a reallocation of the Executive's defining authority over budget execution to Congress. The analysis suggests that neither scenario is fully met and, on this basis, indicates that the principal effect of the reforms consists in the constraints imposed on executive discretion over discretionary expenditures, without, at this level of analysis, necessarily amounting to a violation of the separation of powers. Section IV.3 then reviews the main developments of the chapter.

IV.1 REFORMS ESTABLISHING THE MANDATORY EXECUTION OF PARLIAMENTARY AMENDMENTS

The consolidation of the mandatory execution regime for parliamentary amendments relied, over time, on a range of normative instruments, such as the Internal Rules of the CMO, the LDOs, the LOAs, and, ultimately, constitutional amendments. Before examining these reforms in detail, however, it is necessary to briefly outline the portion of the federal budget to which they applied.

As mentioned in Chapter III, the LOA is the instrument through which the Union estimates revenue for the subsequent fiscal year and, based on that forecast, authorizes public expenditures to provide goods and services to society. The LOA therefore sets out both the projected revenues and the authorized expenditures for the fiscal year in which it enters into force.

The LOA has three budgetary components²⁴⁵. The first is the Fiscal Budget, which encompasses the majority of government programs, excluding those related to social security and the investments of state-owned enterprises. The second is the Social Security Budget, which comprises programs in the areas of health, social security, and social assistance, pursuant to Article 194 of the 1988 Constitution. The third is the Investment Budget of State-Owned

²⁴⁵ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 165, §5.

Enterprises, which covers investment programs of state-owned enterprises in which the government holds, directly or indirectly, a majority of the voting capital.

The expenditures provided for each of these components can be grouped into two broad categories²⁴⁶. Financial expenditures are primarily directed toward servicing the public debt and extending loans. Primary expenditures, by contrast, are aimed at the operation of the State and the provision of public services.

Primary expenditures are further subdivided into mandatory and discretionary expenditures. Mandatory expenditures arise from constitutional, statutory, or contractual obligations and have accounted, on average, for approximately 90 to 92% of total primary expenditures²⁴⁷. They consist mainly of social security benefits, constitutional transfers, and personnel expenses.

Discretionary expenditures, by contrast, have represented roughly 8 to 10% of the budget²⁴⁸ and, before the reforms examined in this chapter, were predominantly managed by the Executive branch. These expenditures are subject to an assessment of convenience and opportunity and include items such as the maintenance of social programs, public investments and ministries' operating expenses unrelated to personnel.

As noted in the previous section, mandatory expenditures may be altered by Congress only for the purpose of correcting errors or omissions²⁴⁹. For this reason, negotiations between the Executive and the Legislature have traditionally concentrated on discretionary expenditures. Since the promulgation of the 1988 Constitution, it is within this limited margin of the budget that political actors in both branches have found the greatest flexibility to pursue their respective agendas, including the allocation of resources to infrastructure projects and social programs in their electoral constituencies.

It is within this context that the reforms examined in this chapter were introduced. Their purpose was to constrain executive discretion over these expenditures, primarily through three

²⁴⁶ BRASIL. Ministério do Planejamento e Orçamento. **Orçamento cidadão: Lei orçamentária anual 2025**. [Citizen's Budget: 2025 Annual Budget Law]. Brasília, DF: Secretaria de Orçamento Federal/MPO, 2025. p. 15-16. Available from: https://www.gov.br/planejamento/pt-br/assuntos/orcamento/orcamento-cidadao/25_06_2025_1420_oc_loa_2025.pdf. Accessed on: Jan. 19, 2026.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*

²⁴⁹ This conclusion is supported by a range of legal provisions, including Articles 5, item XXXVI; 23, item I; 37; 85, item VII; 166, §3, item II; 169, §1; and 195, §5 of the 1988 Constitution; Articles 1, §1; 9, §2; and 16, 17, and 24 of Supplementary Law No. 101/2000; and Articles 52, item II, "c", and 56 of Resolution of the Brazilian Congress No. 1, of 22 December 2006 (BRASIL. Câmara dos Deputados. Comissão Mista de Planos, Orçamentos Públicos e Fiscalização. **Relatório de admissibilidade de emendas ao Projeto de Lei Orçamentária Anual – PLOA 2024**. [Admissibility Report on Amendments to the Annual Budget Bill – PLOA 2024]. Brasília, DF: CMO, 2023. p. 3. Available from: https://www.camara.leg.br/internet/comissao/index/mista/orca/comites/2023/cae/loa/Rel_Admiss1.pdf. Accessed on: Jan. 19, 2026.

mechanisms²⁵⁰: (i) the mandatory execution of parliamentary amendments, which in practice account for approximately one third of the discretionary expenditures provided for in the LOA; (ii) the identification of these appropriations through Primary Result identifiers (*indicadores de Resultado Primário, RP*); and (iii) the prohibition of the cancellation of expenditures determined by such amendments without the consent of their authors.

According to Rodrigo Oliveira de Faria, mandatory execution does not convert parliamentary amendments into mandatory expenditures *stricto sensu*; rather, it renders them discretionary expenditures subject to mandatory execution²⁵¹. Within this framework, the Executive retains the authority to withhold such expenditures — a prerogative that does not apply to mandatory spending — provided that any withholding is applied proportionally across all discretionary expenditures, including those defined by the Executive itself. The introduction of RP identifiers, in turn, enabled legislators to monitor the disbursement of resources in real time, rather than relying primarily on *ex post* reporting. Finally, by prohibiting the cancellation of expenditures without the consent of the amendment's author, the reforms introduced a greater degree of rigidity into budgetary appropriations, which may no longer be reduced through the Executive's opening of supplementary or special credits.

The reforms began in 2007 with changes in the use of RP identifiers²⁵². During the transition from the first Luiz Inácio Lula da Silva administration (2003–2006) to the second (2007–2010), RP identifiers were increasingly employed by the Executive to label projects considered strategically relevant. Legislators subsequently adopted a similar practice for their own amendments. In parallel, from 2009 onward, the scope of general rapporteur amendments expanded, allowing for a greater degree of modification of the draft bill submitted by the Executive.

Further changes were introduced from 2013 onward through successive LDOs and LOAs²⁵³. These statutory reforms combined rules on mandatory execution, the use of RP identifiers, and prohibitions on the cancellation of expenditures determined by parliamentary

²⁵⁰ FARIA, Rodrigo Oliveira de. O redesenho das instituições orçamentárias e a explosão das emendas de relator-geral RP-9: o processo orçamentário no centro da crise política. [The Redesign of Budgetary Institutions and the Explosion of the Rapporteur's Amendments (RP-9): The Budgetary Process at the Center of the Political Crisis]. **SciELO Preprints**, São Paulo, 2022. Available from: <https://preprints.scielo.org/index.php/scielo/preprint/view/4875>. Accessed on: Feb. 12, 2025.

²⁵¹ FARIA, Rodrigo Oliveira de. **Emendas** [...], p. 315. As noted previously, parliamentary amendments do not, as a rule, alter the mandatory expenditures set out in the draft budget submitted by the Executive. This reflects not only legal constraints, but also practical considerations. Mandatory expenditures typically arise from constitutional, statutory, or contractual obligations and are therefore foreseeable at the time of budget formulation. Parliamentary amendments, by contrast, cannot be anticipated *ex ante*.

²⁵² *Ibid.*, p. 304-311.

²⁵³ FARIA, Rodrigo Oliveira de. **Emendas** [...], p. 311-319.

amendments in ways that enhanced the Legislature's capacity to monitor and safeguard its budgetary allocations during the execution phase. At the same time, they preserved the Executive's formal authority to establish internal procedures and deadlines governing the disbursement of funds, ensuring that the implementation of the LOA could remain consistent with the broader normative framework governing public expenditure.

This process culminated in the promulgation of ECs Nos. 86/2015, 100/2019, and 102/2019, which, in broad terms, incorporated into the constitutional text changes that had previously been adopted through infralegal and statutory norms²⁵⁴. As a result, by 2020, four categories of parliamentary amendments to the LOA had become subject to mandatory execution: (i) individual amendments (*emendas individuais*), provided for in Article 166, §2, and subsequent provisions since the promulgation of the 1988 Constitution; (ii) rapporteur amendments (*emendas de relator*), introduced by Articles 10, §1, and 16 of the Brazilian Congress Resolution No. 1 of May 17, 1991²⁵⁵; (iii) committee amendments (*emendas de comissão*), introduced by Article 15 of the Brazilian Congress's Resolution No. 1 of May 17, 1991; and (iv) caucus amendments (*emendas de bancada*), introduced by Article 20 of the Brazilian Congress's Resolution No. 2 of September 18, 1995²⁵⁶. The details of this process are examined in the following sections.

IV.1.1 Infralegal Reforms (2007–2021)

The RP identifiers were originally introduced by Law No. 10.266/2001 (2002 LDO)²⁵⁷. Article 18 established that the preparation, approval, and execution of the 2002 LOA should take into account the primary surplus set out in the Fiscal Targets Annex, covering both the Fiscal and Social Security Budgets, as well as a surplus of R\$ 7,460,000,000.00 (seven billion,

²⁵⁴ *Ibid.*, p. 319-327.

²⁵⁵ Although this category of amendments was not formally provided for in Resolution of the Brazilian Congress No. 1 of 17 May 1991, the cited provisions nonetheless came to support their use in practice, as noted by FARIA, Rodrigo Oliveira de. **Emendas** [...], p. 197-198. The full text of the resolution is available on BRASIL. Congresso Nacional. Resolução nº 1, de 17 de maio de 1991. Dispõe sobre a Comissão Mista Permanente a que se refere o § 1º do art. 166 da Constituição Federal. [Resolution No. 1, of May 17, 1991. Provides for the Permanent Joint Committee referred to in § 1 of Article 166 of the Federal Constitution]. **Diário do Congresso Nacional**: seção 2, Brasília, DF, p. 2377, 18 maio 1991. Available from: <https://www2.camara.leg.br/legin/fed/rescon/1991/resolucao-1-17-maio-1991-536680-publicacaooriginal-27673-pl.html>. Accessed on: Jan. 19, 2026.

²⁵⁶ BRASIL. Congresso Nacional. Resolução nº 2, de 14 de setembro de 1995. [Resolution No. 2, of September 14, 1995]. **Diário Oficial da União**: seção 1, Brasília, DF, p. 14349, 18 set. 1995. Available from: <https://www2.camara.leg.br/legin/fed/rescon/1995/resolucao-2-1995-497946-publicacaooriginal-1-pl.html>. Accessed on: Jan. 19, 2026.

²⁵⁷ FARIA, Rodrigo Oliveira de. **Emendas** [...], p. 306.

four hundred and sixty million reais) under the Global Expenditures Program (*Programa de Dispendios Globais*)²⁵⁸.

To that end, Article 14 required that the 2002 LOA include a RP identifier for all categories of expenditure and all funding sources. This identifier was also required to specify whether a given expenditure was of a financial or a primary nature²⁵⁹.

Accordingly, Article 4 established the following set of RP identifiers: (i) personnel and social charges (RP-1); (ii) interest and debt charges (RP-2); (iii) other current expenditures (RP-3); (iv) investments (RP-4); (v) financial investments, including expenditures related to the establishment or capitalization of companies (RP-5); and (vi) debt amortization (RP-6)²⁶⁰.

In their original design, therefore, RP identifiers operated as a technical instrument for monitoring expenditures and for supporting compliance with fiscal targets established by law. The literature indicates, however, that during the transition from the first Luiz Inácio Lula da Silva administration (2003–2006) to the second (2007–2010), RP identifiers began to be used to label projects considered strategically relevant by the Executive²⁶¹.

Article 7, §4, item IV, of Law No. 11.439/2006 (2007 LDO), for example, introduced a specific identifier for the Pilot Project of Public Investments (*Projeto-Piloto de Investimentos Públicos, PPI*)²⁶². Shortly after, Article 4 of Law No. 11.514/2007 (2008 LDO) designated both the PPI and the Growth Acceleration Program (*Programa de Aceleração do Crescimento, PAC*) as priorities of the federal administration, requiring the 2008 LOA to grant them priority in the allocation of resources²⁶³.

Article 8, §7, of 2008 LDO provided that PAC-related actions should be registered in the Integrated System of Federal Government Financial Administration (*Sistema Integrado de Administração Financeira, SIAFI*). When combined with the use of RP identifiers, this

²⁵⁸ BRASIL. Lei nº 10.266, de 24 de julho de 2001. Dispõe sobre as diretrizes para a elaboração da lei orçamentária de 2002 e dá outras providências. [Law No. 10.266, of 24 July 2001. Provides for the guidelines for the drafting of the 2002 Budget Law and makes other provisions. Promulgated with Veto Message No. 758]. **Diário Oficial da União**: seção 1, Brasília, DF, p. 1, 24 jul. 2001. Available from: https://www.planalto.gov.br/ccivil_03/leis/leis_2001/110266.htm. Accessed on: Sept. 7, 2025.

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*

²⁶¹ FARIA, Rodrigo Oliveira de, *op. cit.*, p. 306-307.

²⁶² BRASIL. Lei nº 11.439, de 29 de dezembro de 2006. Dispõe sobre as diretrizes para a elaboração da Lei Orçamentária de 2007 e dá outras providências. [Law No. 11.439, of 29 December 2006. Provides for the guidelines for the drafting of the 2007 Budget Law and makes other provisions. Promulgated with veto message]. **Diário Oficial da União**: seção 1, Brasília, DF, p. 2, 29 dez. 2006. Available from: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/111439.htm. Accessed on: Sept. 7, 2025.

²⁶³ BRASIL. Lei nº 11.514, de 13 de agosto de 2007. Dispõe sobre as diretrizes para a elaboração e execução da Lei Orçamentária de 2008 e dá outras providências. [Law No. 11.514, of 13 August 2007. Provides for the guidelines for the drafting and execution of the 2008 Budget Law and makes other provisions. Promulgated with veto message]. **Diário Oficial da União**: seção 1, Brasília, DF, p. 2, 14 ago. 2007. Available from: https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/lei/11514.htm. Accessed on: Sept. 7, 2025.

framework enabled the federal administration to monitor the execution of such actions across the direct and indirect administrations, at all levels of government and by other executing entities, during the implementation phase, rather than relying on *ex post* reporting²⁶⁴.

The second most significant infralegal reform consisted in an expansion of the authorizations under which the rapporteur of the LOA bill — also referred to as the “general rapporteur” (*relator-geral*) — could propose amendments²⁶⁵. To understand the significance of this reform, it is first necessary to outline the procedure through which the LOA bill is deliberated in Congress.

As noted in Chapter III, the President of the Republic must submit the draft LOA bill to Congress by August 31. Once submitted, the bill is examined primarily within the CMO²⁶⁶. The Committee is composed of forty full members — thirty Deputies and ten Senators — with an equal number of alternates²⁶⁷. Party and caucus representation within the CMO is determined by the Board of the Brazilian Congress (*Mesa do Congresso Nacional*), in accordance with the principle of proportional party representation.

The deliberative process begins with public hearings held by the CMO²⁶⁸, which typically include the participation of ministers and other senior officials from the public administration. Following these hearings, members of Congress, state caucuses, and standing committees may submit proposed amendments to the LOA bill²⁶⁹.

The next stage involves the presentation of a revenue report (*relatório da Receita Federal*), assessing whether the revenue estimates included in the bill are adequate²⁷⁰. The CMO then votes on this report. Upon its approval, the general rapporteur submits a preliminary opinion (*parecer preliminar*) to the Committee. This document establishes the guidelines for

²⁶⁴ FARIA, Rodrigo Oliveira de. **Emendas** [...], p. 306-307.

²⁶⁵ *Ibid.*, p. 307.

²⁶⁶ BRASIL. [Constituição (1988)]. **Constituição** [...], art. 166, §§1-2.

²⁶⁷ BRASIL. Congresso Nacional. Resolução nº 1, de 22 de dezembro de 2006. Dispõe sobre a Comissão Mista Permanente a que se refere o § 1º do art. 166 da Constituição, bem como a tramitação das matérias a que se refere o mesmo artigo. [Resolution no. 1, of December 22, 2006-CN. Provides for the Permanent Joint Committee referred to in § 1 of Article 166 of the Constitution, as well as the procedure for matters covered by that article]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 143, n. 206, p. 4, 26 dez. 2006. Arts. 5 and 6. Available from: <https://www.congressonacional.leg.br/web/cmo/atribuicoes-e-legislacao/resolucao-n-01-de-2006-cn>. Accessed on: Jan. 6, 2026.

²⁶⁸ *Ibid.*

²⁶⁹ BRASIL. Congresso Nacional. Passo a passo da LOA [Step by Step of the Budget Law (LOA)]. **Congresso Nacional**, Brasília, DF, [2025]. Available from: <https://www.congressonacional.leg.br/web/orcamento/entenda/ passo-a-passo-da-loa>. Accessed on: Sept. 7, 2025.

²⁷⁰ BRASIL. Congresso Nacional. Resolução nº 1, de 22 de dezembro de 2006 [...], arts. 30-34; BRASIL. Congresso Nacional. Passo a passo [...].

the preparation of the sectoral reports (*relatórios setoriais*) and of the final report (*relatório final*) on the LOA bill and thus occupies a central position in the deliberative process²⁷¹.

Members of Congress, state caucuses, and committees may submit proposed amendments to the preliminary opinion. The general rapporteur reviews these proposals and incorporates or rejects them in accordance with the Committee's Internal Rules, after which the CMO votes on the revised text. Sectoral rapporteurs then present their reports to the Committee, assessing the proposed amendments to the LOA bill within their respective policy areas²⁷². Each sectoral report is subsequently submitted to a vote within the CMO.

In the final stage of the Committee's proceedings, the general rapporteur evaluates any remaining proposed amendments and submits a final report²⁷³. The CMO then votes on this report. The approved version of the bill is subsequently forwarded to the Plenary of Congress, which must vote on it by 22 December. Once approved, it becomes the LOA and is sent to the President of the Republic for enactment.

The schedule for the deliberation of the 2026 LOA bill, reproduced below (Table 6), provides an illustration of the process described above. According to the literature, it was precisely through the preliminary opinions — referenced in phases 7, 8, and 9 — that the second relevant infralegal reform was carried out from 2009 onward²⁷⁴.

Table 6 – Schedule for the deliberation of the 2026 LOA bill

	Date	Phase Description
1	October 16–17, 2025	Publication of the bill as submitted by the Executive
2	October 21, 2025	Public hearings
3	October 24–November 14, 2025	Submission of expenditure and revenue amendments, including revenue waivers
4	November 14, 2025	Publication of amendments
5	November 14–17, 2025	Publication of the revenue report
6	November 18, 2025	Vote on the revenue report and related amendments
7	November 19, 2025	Publication of the preliminary opinion
8	November 24, 2025	Submission of amendments to the preliminary opinion
9	November 25, 2025	Vote on the preliminary opinion and related amendments
10	November 26–December 1, 2025	Publication of sectoral reports
11	December 2–9, 2025	Vote on sectoral reports
12	December 10–15, 2025	Publication of the final report
13	December 16, 2025	Vote on the final report
14	December 17, 2025	Submission of the CMO opinion to the Presiding Board of the Brazilian Congress

²⁷¹ BRASIL. Congresso Nacional. Resolução nº 1, de 22 de dezembro de 2006 [...], arts. 51-55; BRASIL. Congresso Nacional. Passo a passo [...].

²⁷² BRASIL. Congresso Nacional. Resolução nº 1, de 22 de dezembro de 2006 [...], arts. 71-74; 75 and 78; BRASIL. Congresso Nacional. Passo a passo [...].

²⁷³ BRASIL. Congresso Nacional. Resolução nº 1, de 22 de dezembro de 2006 [...], arts. 76 e 77; BRASIL. Congresso Nacional. Passo a passo [...].

²⁷⁴ FARIA, Rodrigo Oliveira de. *Emendas* [...], p. 307-308.

15	December 17–18, 2025	Vote on the CMO opinion by the Brazilian Congress
16	December 18–22, 2025	Implementation of plenary decisions and preparation of the enrolled bill (<i>geração de autógrafos</i>)

Source: adapted from BRASIL. Congresso Nacional. Cronograma da Lei Orçamentária Anual (LOA) 2026. [Annual Budget Law (LOA) 2026 Timeline]. **Congresso Nacional**, Brasília, DF, 2025. Available from: <https://www.congressonacional.leg.br/web/orcamento/acompanhe/orcamento-anual/-/loa/2026/informacoes/cronograma>. Accessed on: Jan. 5, 2026.

To assess the extent of this change, it is necessary to recall the preceding framework governing the powers of the general rapporteur. That framework was set out in Resolution No. 01 of 4 October 2001, which brought the Internal Rules of the CMO into compliance with Supplementary Law No. 101/2000²⁷⁵. Article 27 confined the general rapporteur's authority to technical matters, allowing amendments to expenditure and revenue only to correct technical or legal errors and omissions, to consolidate proposals pursuing the same objective, or to enable the achievement of the results sought by a set of amendments²⁷⁶. Although this regulatory approach continued to guide practice during the initial period of application of the Brazilian Congress's Resolution No. 1 of 22 December 2006, it was no longer expressly codified²⁷⁷.

Within this framework, between 2001 and 2008, general rapporteur amendments remained largely circumscribed²⁷⁸. In practice, they were directed toward: (i) correcting constitutional, legal, or technical errors, omissions, or inadequacies; (ii) aligning the budget with sectoral reports and approved floor amendments; (iii) accommodating expenditure increases arising from minimum-wage adjustments; (iv) implementing general adjustments to public servants' remuneration pursuant to Article 37, item X, of the 1988 Constitution; (v) adjusting the aggregate amounts allocated to public health actions and services; and (vi) providing appropriations to compensate states, the Federal District, and municipalities for tax exemptions granted under Supplementary Law No. 87/1996 (*Lei Kandir*).

From 2009 onward, however, the scope of these authorizations expanded, not through formal alterations to the Committee's Internal Rules, but through the content of the preliminary

²⁷⁵ FARIA, Rodrigo Oliveira de. **Emendas** [...], p. 213-214.

²⁷⁶ BRASIL. Congresso Nacional. Resolução nº 1, de 4 de outubro de 2001. Dispõe sobre a comissão mista permanente a que se refere o § 1º do art. 166 da Constituição e sobre a tramitação das matérias a que se refere o mesmo artigo. [Resolution No. 1, of 4 October 2001. Provides for the Standing Joint Committee referred to in §1 of Article 166 of the Constitution and the procedure for matters under the same article]. **Diário Oficial da União**: seção 1, Brasília, DF, p. 5, 8 out. 2001. Available from: <https://www2.camara.leg.br/legin/fed/rescon/2001/resolucao-1-4-outubro-2001-497941-publicacaooriginal-1-pl.html>. Accessed on: Sept. 7, 2025.

²⁷⁷ In its original version, the resolution did not include provisions expressly limiting general-rapporteur amendments. Article 52, item II, 'a', instead provided that the specific parameters governing such amendments were to be defined in the preliminary opinion. For the full text, see BRASIL. Congresso Nacional. Resolução nº 1, de 22 de dezembro de 2006.

²⁷⁸ FARIA, Rodrigo Oliveira de. **Emendas** [...], p. 307.

opinions themselves²⁷⁹. The preliminary opinion on LOA Bill No. 46/2009-CN, for example, included fifteen authorizations for general rapporteur amendments, including provisions allowing for “the allocation of resources with a focus on mobility and urban infrastructure, security, and tourism, primarily in the states hosting the 2014 FIFA World Cup” and “the reinforcement of budgetary appropriations in the areas of agriculture, health, defense, education, and other areas indicated by the sectoral rapporteurs”²⁸⁰.

This development was later reflected in the inclusion of a broad clause in the preliminary opinion on LOA Bill No. 28/2020, which authorized the general rapporteur to allocate additional resources to programs provided for in the bill²⁸¹. In 2021, Congress further formalized this approach by introducing item IV into Article 53 of the CMO’s Internal Rules²⁸², providing that the preliminary opinion may authorize the general rapporteur to propose amendments creating new budgetary programs or increasing allocations to existing ones.

Taken together, the reforms analyzed in this section produced two main outcomes. First, the Legislature began incorporating RP identifiers into LDO and LOA bills for existing categories of parliamentary amendments. This enabled legislators to monitor the execution of these allocations through SIAFI and similar databases²⁸³, rather than relying on *ex post* reporting. Second, the expansion of general rapporteur amendments via preliminary opinions resulted in a more extensive modification of the bill originally submitted by the Executive²⁸⁴.

IV.1.2 Statutory Reforms (2013–2019)

In the 2014 LDO, Congress established the mandatory execution of individual amendments and required their classification under RP identifier No. 6 (RP-6). The 2014 LOA reinforced this shift by prohibiting the cancellation of the corresponding expenditures without the author’s prior approval. Because budgetary laws are time-limited, this model was replicated

²⁷⁹ *Ibid.*, p. 307–308.

²⁸⁰ *Ibid.*, p. 308.

²⁸¹ DIÁRIO DO CONGRESSO NACIONAL. Brasília, DF: Congresso Nacional, suplemento único ao n. 9, p. 51, 18 mar. 2021. Available from: <https://legis.senado.leg.br/diarios/ver/106331?sequencia=1269>. Accessed on: Sept. 7, 2025.

²⁸² BRASIL. Congresso Nacional. Resolução nº 1, de 22 de dezembro de 2006 [...], art. 53, item IV.

²⁸³ For further information on SIAFI, see BRASIL. Ministério da Fazenda. What is SIAFI? **Ministério da Fazenda**, Brasília, DF, 20 abr. 2020. Available from: https://www.gov.br/tesouronacional/en/siafi/what-is-siafi?set_language=en. Accessed on: Sept. 7, 2025. For information on similar databases to which Congress has access, see BRASIL. Senado Federal. Siga Brasil. **Senado Federal**, Brasília, DF, [2025]. Available from: <https://www12.senado.leg.br/orcamento/sigabrasil>. Accessed on: Sept. 7, 2025.

²⁸⁴ FARIA, Rodrigo Oliveira de. **Emendas** [...], p. 309.

in successive LDOs and LOAs, gradually extending mandatory execution to caucus amendments and, eventually, to committee and rapporteur amendments.

This expansion was accompanied by the introduction of distinct RP identifiers for each category of amendment: RP-6 for individual amendments, RP-7 for caucus amendments, RP-8 for committee amendments, and RP-9 for general rapporteur amendments. As anticipated in Section IV.1.1, this classification enabled the Legislature to monitor the execution of its budgetary allocations through the electronic systems adopted by the Union, rather than relying exclusively on *ex post* reporting.

The prohibition on the cancellation of these amendments further constrained the Executive's discretion over the corresponding expenditures²⁸⁵. Under ordinary circumstances, the LDO authorizes the Executive to open supplementary or special credits by decree. This mechanism operates through the reallocation of existing appropriations, rather than the creation of new expenditures or an increase in the overall spending ceiling, and therefore requires the identification of a compensatory funding source within the approved budget.

In this context, although the introduction of mandatory execution may be understood as limiting the non-execution of parliamentary amendments, Congress went further by prohibiting the cancellation of expenditures introduced by such amendments. This restriction was designed to prevent the Executive from reallocating these appropriations when opening supplementary or special credits by decree. This measure added an additional safeguard against the opening of supplementary or special credits at the expense of parliamentary allocations.

Alongside these developments, Congress carved out exceptions for cases involving technical impediments, under which appropriations originating from parliamentary amendments would not be subject to mandatory execution. This exception preserved a significant aspect of executive discretion in budget execution, particularly because, during the period examined here, the scope of what constituted a technical impediment was largely defined by the Executive through joint ministerial ordinances. This arrangement is examined in greater detail in Section IV.2.

For present purposes, it is sufficient to note that Congress coupled this exception with procedural constraints. In broad terms, Article 52, §2, of the 2014 LDO and Articles 58 and 59 of the 2015 LDO required the branches of government and the Institutions Essential to Justice to report technical impediments to Congress within four months of the publication of the LOA. Where such impediments were deemed insurmountable, Congress was granted one month to

²⁸⁵ FARIA, Rodrigo Oliveira de. O redesenho [...].

indicate how the affected appropriations should be reallocated. If Congress failed to act within this period, the reallocation was carried out by the Executive.

This statutory procedure was subsequently incorporated into the 1988 Constitution through EC No. 86/2015. As a result, later LDOs largely confined themselves to restating that parliamentary amendments would not be subject to mandatory execution in cases of technical impediments, given that the applicable procedure was now constitutionally defined. This arrangement was later modified by EC No. 100/2019, which repealed the procedure introduced by EC No. 86/2015 while preserving the rule that amendments affected by technical impediments are not subject to mandatory execution.

Within this revised framework, Article 62-A of the 2020 LDO defined technical impediment as factual or legal circumstance that prevents or suspends the execution of a budgetary appropriation. Paragraph 2 of that article enumerated specific instances of technical impediments and expressly authorized the Executive to recognize additional ones. Article 67, in turn, established a new procedure for amendments affected by technical impediments. Unlike the earlier framework, however, it did not specify the consequences of congressional inaction once such impediments were identified.

Taken together, the statutory reforms examined in this section combined mandatory execution rules, RP identifiers, and prohibitions on the cancellation of expenditures in ways that strengthened the Legislature's capacity to monitor and protect its allocations during the execution phase. At the same time, they preserved the Executive's formal authority to establish internal procedures and deadlines, as well as to define the conditions governing the disbursement of funds, including the recognition of technical impediments grounded in legal considerations. These reforms are summarized below, organized by administration.

Table 7 – Summary of statutory reforms during Dilma Rousseff's first (2011–2014) and second (2015–2016) administrations

(to be continued)

Legislation	Date of Enactment	Relevant Provisions	Practical Implications	Reference
2014 LDO	December 24, 2013	Arts. 4; 7, §4, 'd'; and 52	Introduced the mandatory execution of individual amendments, required their classification under Primary Result	BRASIL. Lei nº 12.919, de 24 de dezembro de 2013. Dispõe sobre as diretrizes para a elaboração e execução da Lei Orçamentária de 2014 e dá outras providências. [Law No. 12.919, of 24 December 2013. Provides for the guidelines for the drafting and execution of the 2014 Budget Law and makes other provisions. Promulgated with veto message]. Diário Oficial da União : seção 1, Brasília, DF, p. 1, 26 dez. 2013. Available from:

			Identifier No. 6 (RP-6), and established a procedure for amendments affected by technical impediments	https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/112919.htm . Accessed on: Oct. 3, 2025.
2014 LOA	January 20, 2014	Arts. 4, caput, item XXIX, §§5 and 6	Prohibited the cancellation of expenditures introduced by individual amendments without the author's prior approval	BRASIL. Lei nº 12.952, de 20 de janeiro de 2014. Estima a receita e fixa a despesa da União para o exercício financeiro de 2014. [Law No. 12.952, of 20 January 2014. Estimates the revenue and fixes the expenditure of the Union for the 2014 financial year]. Diário Oficial da União : seção 1, Brasília, DF, p. 1, 21 jan. 2014. Available from: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/112952.htm . Accessed on: Oct. 3, 2025.
2015 LDO	January 2, 2015	Arts. 7, §4, 'd'; 54–65	Defined the rules governing the mandatory execution of individual amendments, maintained their classification under RP-6, and established a procedure for those affected by technical impediments	BRASIL. Lei nº 13.080, de 2 de janeiro de 2015. Dispõe sobre as diretrizes para a elaboração e execução da Lei Orçamentária de 2015 e dá outras providências. [Law No. 13.080, of 2 January 2015. Provides for the guidelines for the drafting and execution of the 2015 Budget Law and makes other provisions. Promulgated with veto message]. Diário Oficial da União : seção 1, Brasília, DF, ano 152, n. 1-A, p. 1, 2 jan. 2015. Available from: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/113080.htm . Accessed on: Oct. 3, 2025.
2015 LOA	April 20, 2015	Arts. 4, caput and § 5	Prohibited the cancellation of expenditures introduced by individual amendments without the author's prior approval	BRASIL. Lei nº 13.115, de 20 de abril de 2015. Estima a receita e fixa a despesa da União para o exercício financeiro de 2015. [Law No. 13.115, of April 20, 2015. Estimates revenue and sets the Union's expenditures for the 2015 fiscal year. Promulgated with veto message]. Diário Oficial da União : seção 1, Brasília, DF, ano 152, n. 75, p. 1, 22 abr. 2015. Available from: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/113115.htm . Accessed on: Oct. 3, 2025.
2016 LDO	December 30, 2015	Arts. 6, §4, 'd'; 57–70	Maintained the prior regime governing the mandatory execution of individual amendments and introduced a regime of mandatory execution for	BRASIL. Lei nº 13.242, de 30 de dezembro de 2015. Dispõe sobre as diretrizes para a elaboração e execução da Lei Orçamentária de 2016 e dá outras providências. [Law No. 13.242, of December 30, 2015. Provides for the guidelines for the drafting and execution of the 2016 Budget Law and makes other provisions. Promulgated with veto message]. Diário Oficial da União : seção 1, Brasília, DF, ano 152, n. 250-A, 31 dez. 2015. Available from: https://www.planalto.gov.br/ccivil_03/_ato2015-

			caucus amendments	2018/2015/lei/113242.htm. Accessed on: Oct. 3, 2025.
2016 LOA	January 14, 2016	Art. 4, caput e §6	Prohibited the cancellation of expenditures introduced by both individual and collective amendments (caucus and committee) without the author's prior approval	BRASIL. Lei nº 13.255, de 14 de Janeiro de 2016. Estima a receita e fixa a despesa da União para o exercício financeiro de 2016. [Law No. 13.255, of January 14, 2016. Estimates revenue and sets the Union's expenditures for the 2016 fiscal year]. Diário Oficial da União : seção 1, Brasília, DF, ano 153, n. 10, p. 1, 15 jan. 2016. Available from: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/113255.htm . Accessed on: Oct. 3, 2025.

Source: elaborated by the author.

Table 8 – Summary of Statutory Reforms during Michel Temer's Administration (2016–2018)

(to be continued)

Legislation	Date of Enactment	Relevant Provisions	Practical Implications	Reference
2017 LDO	December 26, 2016	Arts. 7, §4, 'd' and 'e'; 46, §6; 61–72	Maintained the prior regimes governing individual and caucus amendments, required the classification of caucus amendments under Primary Result Identifier No. 7 (RP-7), and prohibited their cancellation without the author's prior approval	BRASIL. Lei nº 13.408, de 26 de dezembro de 2016. Dispõe sobre as diretrizes para a elaboração e execução da Lei Orçamentária de 2017 e dá outras providências. [Law No. 13.408, of December 26, 2016. Provides for the guidelines for the drafting and execution of the 2017 Budget Law and makes other provisions. Promulgated with veto message]. Diário Oficial da União : seção 1, Brasília, DF, ano 153, n. 248, p. 5, 27 dez. 2016. Available from: https://www.planalto.gov.br/ccivil_03/ato2015-2018/2016/lei/113408.htm . Accessed on: Oct. 3, 2025.
2017 LOA	January 10, 2017	Art. 4, caput and §7	Prohibited the cancellation of expenditures introduced by individual and caucus amendments without the author's prior approval	BRASIL. Lei nº 13.414, de 10 de janeiro de 2017. Estima a receita e fixa a despesa da União para o exercício financeiro de 2017. [Law No. 13.414, of January 10, 2017. Estimates revenue and sets the Union's expenditures for the 2017 fiscal year]. Diário Oficial da União : seção 1, Brasília, DF, ano 154, n. 8, p. 1, 11 jan. 2017. Available from: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/113414.htm . Accessed on: Oct. 3, 2025.

2018 LDO	August 8, 2017	Arts. 5, §4, 'd' and 'e'; 58–66	Maintained the prior regime governing individual and caucus amendments, as well as their classification under Primary Result Identifiers Nos. 6 (RP-6) and 7 (RP-7)	BRASIL. Lei nº 13.473, de 8 de agosto de 2017. Dispõe sobre as diretrizes para a elaboração e execução da Lei Orçamentária de 2018 e dá outras providências. [Law No. 13.473, of August 8, 2017. Provides for the guidelines for the drafting and execution of the 2018 Budget Law and makes other provisions. Promulgated with veto message]. Diário Oficial da União : seção 1, Brasília, DF, ano 154, n. 152, p. 1, 9 ago. 2017. Available from: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/113473.htm . Accessed on: Oct. 3, 2025.
2018 LOA	January 2, 2018	Art. 4, caput and §6	Prohibited the cancellation of expenditures introduced by individual and caucus amendments without the author's prior approval	BRASIL. Lei nº 13.587, de 2 de janeiro de 2018. Estima a receita e fixa a despesa da União para o exercício financeiro de 2018. [Law No. 13.587, of January 2, 2018. Estimates revenue and sets the Union's expenditures for the 2018 fiscal year. Promulgated with veto message; see Legislative Decrees No. 1, 2, 3, 4, 5, and 6 of 2019]. Diário Oficial da União : seção 1, Brasília, DF, ano 155, n. 2, p. 1, 2 jan. 2018. Available from: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/113587.htm . Accessed on: Oct. 3, 2025.
2019 LDO	August 14, 2018	Arts. 6, §4, 'd' and 'e'; 61–70	Maintained the prior regime governing individual and caucus amendments, as well as their classification under Primary Result Identifiers Nos. 6 (RP-6) and 7 (RP-7)	BRASIL. Lei nº 13.707, de 14 de agosto de 2018. Dispõe sobre as diretrizes para a elaboração e execução da Lei Orçamentária de 2019 e dá outras providências. [Law No. 13.707, of August 14, 2018. Provides for the guidelines for the drafting and execution of the 2019 Budget Law and makes other provisions. Promulgated with veto message]. Diário Oficial da União : seção 1, Brasília, DF, ano 155, n. 157, p. 1, 15 ago. 2018. Available from: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/113707.htm . Accessed on: Oct. 3, 2025.
2019 LOA	January 15, 2019	Art. 4, caput and §6	Prohibited the cancellation of expenditures introduced by individual and caucus amendments without the author's prior approval	BRASIL. Lei nº 13.808, de 15 de janeiro de 2019. Estima a receita e fixa a despesa da União para o exercício financeiro de 2019. [Law No. 13.808, of January 15, 2019. Estimates revenue and sets the Union's expenditures for the 2019 fiscal year. Promulgated with veto message]. Diário Oficial da União : seção 1, Brasília, DF, ano 157, n. 11, 16 jan. 2019. Available from: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/113808.htm . Accessed on: Oct. 3, 2025.

Source: elaborated by the author.

Table 9 – Summary of statutory reforms during Jair Bolsonaro's administration (2019–2022)

(to be continued)

Legislation	Date of Enactment	Relevant Provisions	Practical Implications	Reference
2020 LDO	November 11, 2019	Arts. 6, §4, 'c', items 1, 2, 5, 6; 62–68	Maintained the prior regime governing individual and caucus amendments, along with their classification under Primary Result Identifiers Nos. 6 (RP-6) and 7 (RP-7); assigned Primary Result Identifier No. 8 (RP-8) to committee amendments and No. 9 (RP-9) to general rapporteur amendments; and established a new procedure for amendments affected by technical impediments	BRASIL. Lei nº 13.898, de 11 de novembro de 2019. Dispõe sobre as diretrizes para a elaboração e a execução da Lei Orçamentária de 2020 e dá outras providências. [Law No. 13.898, of November 11, 2019. Provides for the guidelines for the drafting and execution of the 2020 Budget Law and makes other provisions. Promulgated with parts vetoed]. Diário Oficial da União : seção 1, Brasília, DF, ano 157, n. 218-C, p. 1, 11 nov. 2019. Available from: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/L13898.htm . Accessed on: Oct. 3, 2025.
2020 LOA	January 17, 2020	Art. 4, caput and §7	Prohibited the cancellation of expenditures introduced by individual, caucus, committee and rapporteur amendments without the author's prior approval	BRASIL. Lei nº 13.978, de 17 de janeiro de 2020. Estima a receita e fixa a despesa da União para o exercício financeiro de 2020. [Law No. 13.978, of January 17, 2020. Estimates revenue and sets the Union's expenditures for the 2020 fiscal year]. Diário Oficial da União : seção 1, Brasília, DF, ano 158, n. 13, p. 1-16, 20 jan. 2020. Available from: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/113978.htm . Accessed on: Oct. 3, 2025.

Source: elaborated by the author.

IV.1.3 Constitutional Reforms (2015–2019)

The constitutional reforms began with EC No. 86/2015, which incorporated into the Constitution changes previously adopted through statutory legislation. In particular, the amendment revised Article 165 of the 1988 Constitution to establish the mandatory execution of individual parliamentary amendments and to constitutionalize the procedures set out in the 2014 and 2015 LDOs for amendments affected by technical impediments.

In 2019, EC No. 100 revised this framework in three respects. First, it imposed a duty on the administration to execute budgetary appropriations (*programações orçamentárias*), without distinguishing between discretionary and mandatory expenditures. This measure qualified the prevailing view that discretionary expenditures were merely authorizational, in contrast to mandatory expenditures, which are legally binding. Second, it extended the regime of mandatory execution to caucus amendments. Third, it repealed the procedural rules on technical impediments introduced by EC No. 86, while preserving the exemption of amendments affected by such impediments from mandatory execution.

Later that same year, Congress enacted EC No. 102, which extended mandatory execution to all discretionary expenditures. As noted in Section IV.1, mandatory expenditures may be altered by Congress only for the purpose of correcting errors or omissions; as a result, parliamentary amendments are concentrated on discretionary expenditures. By extending mandatory execution to this entire category, EC No. 102 subjected all types of parliamentary — individual, caucus, committee, and rapporteur amendments — to mandatory execution, while preserving the prohibition on the execution of amendments affected by technical impediments. With this expansion, EC No. 102 completed a framework that had been progressively developed since 2007, reshaping a longstanding feature of Executive–Legislative relations in Brazil. These reforms are summarized below, organized by administration.

Table 10 – Summary of constitutional reforms during Dilma Rousseff’s second (2015–2016) administration

Constitutional Amendment	Date of Enactment	Relevant Provisions	Practical Implications	Reference
EC No. 86/2015	March 17, 2015	Art. 165, §§ 9, 11, 12, 14 and 15	Incorporated into the 1988 Constitution the mandatory execution of individual amendments, as well as the procedure previously established in the 2014 and 2015 LDOs for amendments affected by technical impediments	BRASIL. Emenda Constitucional nº 86, de 17 de março de 2015. Altera os arts. 165, 166 e 198 da Constituição Federal, para tornar obrigatória a execução da programação orçamentária que especifica. [Constitutional Amendment No. 86, of March 17, 2015. Amends Articles 165, 166, and 198 of the Federal Constitution to make mandatory the execution of specified budgetary programming]. Diário Oficial da União : seção 1, Brasília, DF, ano 152, n. 52, p. 1-2, 18 mar. 2015. Available from: https://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/em

				c86.htm. Accessed on: Oct. 15, 2025.
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Source: elaborated by the author.

Table 11 – Summary of constitutional reforms during Jair Bolsonaro’s administration (2019–2022)

(to be continued)

Constitutional Amendment	Date of Enactment	Relevant Provisions	Practical Implications	Reference
EC No. 100/2019	June 26, 2019	Art. 165, §§ 10, 12 and 14	Introduced a clause establishing that the administration has a duty to execute budgetary allocations, shifting the understanding of discretionary expenditures from an authorizational model toward a more binding framework; extended mandatory execution to caucus amendments; and revoked the procedure established by EC No. 86/2015 for amendments affected by technical impediments	BRASIL. Emenda Constitucional nº 100, de 26 de junho de 2019. Altera os arts. 165 e 166 da Constituição Federal para tornar obrigatória a execução da programação orçamentária proveniente de emendas de bancada de parlamentares de Estado ou do Distrito Federal. [Constitutional Amendment No. 100, of June 26, 2019. Amends Articles 165 and 166 of the Federal Constitution to make mandatory the execution of budgetary programming arising from state or Federal District parliamentary bloc amendments]. Diário Oficial da União : seção 1, Brasília, DF, ano 157, n. 122, p. 1, 27 jun. 2019. Available from: https://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc100.htm . Accessed on: Oct. 15, 2025.
EC No. 102/2019	September 26, 2019	Art. 165, § 11, item III	Expanded the scope of mandatory execution to encompass all discretionary expenditures, with the practical effect of subjecting all forms of parliamentary	BRASIL. Emenda Constitucional nº 102, de 26 de setembro de 2019. Dá nova redação ao art. 20 da Constituição Federal e altera o art. 165 da Constituição Federal e o art. 107 do Ato das Disposições Constitucionais Transitórias. [Constitutional Amendment No. 102, of September 26, 2019. Gives new wording to Article 20 of the Federal Constitution and amends Article 165 of the Federal

			amendments — individual, caucus, committee, and general rapporteur amendments — to mandatory execution.	Constitution and Article 107 of the Transitional Constitutional Provisions Act]. Diário Oficial da União : seção 1, Brasília, DF, ano 157, n. 188, p. 1, 27 set. 2019. Available from: https://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc102.htm . Accessed on: Oct. 15, 2025.
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Source: elaborated by the author.

IV.2 ANALYSIS IN LIGHT OF THE SEPARATION OF POWERS

Having outlined the reforms examined in this study in Sections IV.1.1, IV.1.2, and IV.1.3, the analysis now turns to whether they generate tensions with the separation of powers. This assessment draws on the two criteria identified in Chapter III and proceeds from the premise that the reforms emerged from a Legislature seeking greater influence over the allocation of public resources.

The first criterion concerns institutional autonomy, understood as the capacity of each branch to retain sufficient control over its internal affairs to perform its core function. In budgetary terms, this includes the ability of each branch to prepare its own budgetary proposal without undue interference from the others. From this perspective, the reforms would raise concerns if they enabled one branch to determine or condition the budgetary proposal of another. This would be the case, for example, if the Legislature were empowered to elaborate the Executive's budgetary proposal.

When assessed against this criterion, however, the reforms do not give rise to such concerns. Following their adoption, each branch retained the competence to prepare its own budgetary proposal. The Executive preserved the authority to consolidate these proposals without alteration and to submit the LOA bill as a whole, while Congress continued to deliberate on, amend, and approve the LOA. Responsibility for budget execution, as well as for reporting to Congress and to oversight bodies, likewise remained with the Executive.

From a separation-of-powers perspective, this conclusion rests on the distinction between formulating the Executive's budgetary proposal and deliberating on it once submitted. Formulation presupposes influence over the Executive's internal affairs, including its organization, personnel, procedures, and operations. If such competence were attributed to the Legislative branch, the reforms would risk collapsing the distinction between the stages of formulation and deliberation in the budgetary process. That collapse would, in turn, open the

way for congressional encroachment upon the execution stage by undermining the institutional autonomy through which the Executive performs its core function.

The reforms examined here, by contrast, were directed at the deliberative phase of the budgetary process, which takes place after the submission of the Executive's proposal. At this stage, Congress may, on a contextual reading of Articles 49, items V and XI; 62; 68; and 166, head paragraph and §§ 2 and 3, of the 1988 Constitution, amend the draft budget in order to establish the general conditions governing public expenditure and the allocation of resources.

Even then, congressional influence appears to have remained limited following the reforms. Because parliamentary amendments to mandatory expenditures are generally restricted to the correction of errors or omissions, the scope for more substantive legislative intervention during the deliberative phase is largely confined to discretionary expenditures, which typically account for approximately 8 to 10% of total budgetary outlays.

Within this domain, the 1988 Constitution further constrains congressional intervention. Article 166, §9 limits individual amendments to 2% of revenues, while Article 166, §12, caps caucus amendments at 1%. Committee and general rapporteur amendments are not subject to a constitutional ceiling²⁸⁶. Nevertheless, when individual, caucus, committee, and rapporteur amendments are considered together, they have not exceeded 30% of discretionary spending since 2014²⁸⁷, leaving the remaining share under executive control.

A second point of assessment concerns the definition of authority. As discussed in Section III.1.2, each branch is vested with exclusive and non-delegable competences through which its core function is realized. The reforms would come into tension with this dimension of the separation of powers if they entailed a formal reallocation of authority over the implementation of the LOA to the Legislature, in a manner inconsistent with a contextual interpretation of Articles 84, items IV and XXIV; 85, items VI and VII; and 87, items II and IV, of the 1988 Constitution.

As also noted in Section III.1.2, the implementation of the LOA may be divided into two distinct moments. In the first, the Executive establishes internal procedures and deadlines

²⁸⁶ The Executive maintains that only individual and caucus amendments are subject to mandatory execution; this interpretation, however, is difficult to reconcile with Article 165, §§ 10 and 11, of the 1988 Constitution. For the Executive's current interpretation, see BRASIL. Controladoria-Geral da União. *Emendas Parlamentares: 4. Quais emendas são obrigatórias?* [Parliamentary Amendments: 4. Which amendments are of mandatory execution? **Portal da Transparência**, Brasília, DF, 2025. Available from: <https://portaldatransparencia.gov.br/entenda-a-gestao-publica/emendas-parlamentares>. Accessed on: Jan. 19, 2026.

²⁸⁷ SCHYMURA, Luiz Guilherme. Aumento de emendas sinaliza necessidade de nova cultura orçamentária. [Increase in amendments signals the need for a new budgetary culture]. **Conjuntura Econômica**, Rio de Janeiro, p. 8-13, abr. 2024. Available from: <https://portalibre.fgv.br/revista-conjuntura-economica/carta-da-conjuntura/aumento-de-emendas-sinaliza-necessidade-de-nova>. Accessed on: Jan. 12, 2025.

pursuant to the applicable legal framework, through general and impersonal administrative acts. In the second, implementation proceeds through concrete and individualized acts of disbursement, by which legal norms are applied to specific situations and produce direct and immediate effects²⁸⁸.

Because the present inquiry is confined to the legal design of the reforms, it does not extend to an assessment of whether the Executive continued, in practice, to carry out concrete acts of disbursement. Rather, it is limited to examining whether the reforms altered the Executive's legal capacity to do so. In this respect, the authority to issue decrees and regulations establishing internal procedures and deadlines for the faithful execution of the LOA serves as a relevant indicator. Where this authority remains intact, it becomes difficult, at the level of institutional design, to infer that responsibility for implementation has been transferred away from the Executive.

Viewed from this perspective, the reforms examined here do not appear to have affected that authority. The Executive retained the capacity to structure implementation through general and impersonal acts that condition and enable the issuance of concrete acts of disbursement. Moreover, this authority continues to be exercised — just as it was prior to the reforms — within a legally structured framework encompassing the LDO, the PPA, Law No. 4.320/1964, Supplementary Law No. 101/2000, and the constitutional provisions governing public expenditure.

More specifically, the Executive retained control over: (i) the issuance of decrees establishing the monthly disbursement schedule; (ii) the adoption of contingency measures to ensure compliance with the fiscal targets set out in the LDO; (iii) the opening of additional credits; and (iv) the issuance of joint ministerial ordinances identifying technical impediments — including those of a legal nature — to the execution of parliamentary amendments.

Monthly disbursement schedules and budgetary contingency measures regulate the pace and scope of expenditure execution through financial programming decrees. Under Articles 8 and 9 of Supplementary Law No. 101/2000²⁸⁹, the Executive must, within thirty days of the

²⁸⁸ For an overview of the theory of administrative acts under the 1988 Constitution, see BANDEIRA DE MELLO, Celso Antônio. *Atos administrativos* (Capítulo VII). In: BANDEIRA DE MELLO, Celso Antônio. **Curso de direito administrativo**. [Administrative Law Course]. 32. ed. rev. e atual. até a Emenda Constitucional n. 84, de 2 dez. 2014. São Paulo: Malheiros, 2015. p. 379-497; CARVALHO FILHO, José dos Santos. *Atos administrativos* (Capítulo IV). In: CARVALHO FILHO, José dos Santos. **Manual de direito administrativo**. [Administrative Law Manual]. 33. ed. rev., ampl. e atual. São Paulo: Atlas, 2019.

²⁸⁹ BRASIL. Lei Complementar nº 101, de 4 de maio de 2000. Estabelece normas de finanças públicas voltadas para a responsabilidade na gestão fiscal e dá outras providências. [Supplementary Law no. 101 of May 4, 2000. Establishes public finance rules aimed at fiscal responsibility in public financial management and provides other

enactment of the LOA, establish a monthly disbursement schedule in accordance with the applicable LDO. If revenue performance proves insufficient to meet the primary fiscal target set out in the LDO, the Executive is required to impose contingency measures.

Such measures apply only to discretionary expenditures. Mandatory spending — including constitutional and statutory obligations, expenditures related to debt servicing, allocations for innovation and scientific and technological development financed through dedicated funds, and those expressly exempted by the LDO — is not subject to contingency. If projected revenues are partially or fully restored, the previously limited appropriations must be reinstated in proportion to the cuts imposed. Accordingly, all discretionary budgetary allocations, including parliamentary amendments, remain subject to contingency in order to ensure compliance with fiscal targets.

Pursuant to Articles 40–46 of Law No. 4.320/1964²⁹⁰, additional credits authorize expenditures that were not provided for, or were insufficiently provided for, in the LOA. They are classified as supplementary credits, which reinforce existing appropriations; special credits, which finance expenditures for which no specific appropriation exists; and extraordinary credits, which address urgent and unforeseeable needs arising from situations such as war, internal disturbance, or public calamity. As a rule, additional credits are limited to the fiscal year in which they are opened.

Supplementary and special credits require prior legislative authorization — typically granted through the LDO — and are opened by executive decree, subject to the availability of corresponding funding sources. These may include resources obtained through the partial or total cancellation of existing budgetary appropriations²⁹¹. Extraordinary credits, by contrast, are opened directly by executive decree and must be immediately reported to the Legislature.

Although all of these prerogatives indicate that the Executive retained control over budget implementation, the authority to issue ministerial ordinances identifying technical impediments to execution stands out as particularly significant. This prerogative was already

provisions]. **Diário Oficial da União**: seção 1, Brasília, DF, ano 137, n. 86-E, p. 1, 5 maio 2000. Available from: https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp101.htm. Accessed on: Dec. 22, 2025.

²⁹⁰ BRASIL. Lei nº 4.320, de 17 de março de 1964. Estatui Normas Gerais de Direito Financeiro para elaboração e controle dos orçamentos e balanços da União, dos Estados, dos Municípios e do Distrito Federal. [Law No. 4.320 of March 17, 1964. Establishes general rules of financial law for the preparation and control of budgets and balance sheets of the Union, the States, the Municipalities, and the Federal District]. **Diário Oficial da União**: seção 1, Brasília, DF, p. 2745, 23 mar. 1964. Available from: https://www.planalto.gov.br/ccivil_03/leis/l4320.htm. Accessed on: Dec. 22, 2025.

²⁹¹ As noted previously, the reforms examined in this study prohibited the cancellation of expenditures determined by parliamentary amendments precisely to prevent the Executive from offsetting them through the opening of supplementary or special credits.

provided for in the 2014 LDO, which introduced the first regime of mandatory execution of parliamentary amendments, and was consistently preserved in subsequent statutory legislation and constitutional amendments governing mandatory execution.

Article 2 of Joint Ministerial Ordinance No. 40, of February 6, 2014, for instance, provided that execution would be barred in circumstances such as the failure to identify beneficiaries or amounts within the prescribed deadlines; deficiencies in, or the non-approval of, work plans; situations in which the proposed allocation did not correspond to the objectives of the relevant budgetary action or the program under which it was to be executed; and cases in which the proposed amount was excessive, incompatible with the project's execution schedule, or insufficient to ensure the completion of a project stage.

Article 4 further established that Members of Congress were required to provide complete and timely information regarding the allocation of amendments, while designated beneficiaries were required to submit detailed proposals and work plans for technical assessment by the administration. Where these procedural requirements were not met — due to late submissions, omissions, or material errors —, the ordinance provided that execution would be precluded. Table 12, presented below, summarizes these ordinances, situating the 2014 instrument within the broader regulatory framework in force between 2014 and 2020.

Table 12 – Summary of joint ministerial ordinances governing technical impediments for the execution of mandatory parliamentary amendments (2014–2020)

(to be continued)

Joint Ministerial Ordinance	Date of Issuance	Summary	Reference	Observations
Joint Ministerial Ordinance No. 40	February 6, 2014	Establishes the internal procedures, deadlines, and technical impediments for the implementation of individual amendments, in accordance with Law No. 12.919 of December 24, 2013 (2014 LDO)	BRASIL. Portaria Interministerial nº 40, de 6 de fevereiro de 2014. Dispõe sobre procedimentos e cronograma para operacionalização das emendas individuais ao orçamento no Sistema de Gestão de Convênios e Contratos de Repasse – SICONV, com vistas ao atendimento do prazo previsto no inciso I do § 2º do art. 52 da Lei nº 12.919, de 24 de dezembro de 2013 – LDO/2014. [Interministerial Ordinance No. 40, of February 6, 2014. Provides for the procedures and timetable for the implementation of individual budget amendments within the System for the Management of Agreements and Transfer Contracts (SICONV), in order to comply with the deadline set forth in item I of § 2 of Article 52 of Law No. 12,919, of December 24, 2013 (2014 Budget Guidelines Law – LDO/2014)]. <i>Diário Oficial da União</i> : seção 1,	—

			Brasília, DF, ano 151, n. 27, p. 72, 7 fev. 2014. Available from: https://www.gov.br/transferegov/pt-br/legislacao/portarias/portaria-interministerial-no-40-de-6-de-fevereiro-de-2014-revogada-pela-portaria-interministerial-me-cgu-segov-no-767-de-10-de-marco-de-2022 . Accessed on: Jan. 15, 2026.	
Joint Ministerial Ordinance No. 311	July 30, 2015	Establishes the internal procedures, deadlines, and technical impediments for the implementation of individual amendments, in accordance with Law No. 13.080, of January 2, 2015 (2015 LDO)	BRASIL. Portaria Interministerial nº 311, de 30 de julho de 2015. Dispõe sobre procedimentos e cronograma para operacionalização das emendas individuais ao orçamento no Sistema de Gestão de Convênios e Contratos de Repasse – SICONV, com vista ao atendimento do prazo previsto no inciso I do art. 59 da Lei nº 13.080, de 2015. [Interministerial Ordinance No. 311, of July 30, 2015. Provides for the procedures and timetable for the implementation of individual budget amendments within the System for the Management of Agreements and Transfer Contracts (SICONV), in order to comply with the deadline set forth in item I of Article 59 of Law No. 13,080 of 2015]. Diário Oficial da União : seção 1, Brasília, DF, ano 152, n. 145, p. 76-77, 31 jul. 2015. Available from: https://www.gov.br/transferegov/pt-br/legislacao/portarias/portaria-interministerial-no-311-de-30-de-julho-de-2015 . Accessed on: Jan. 15, 2026.	—
Joint Ministerial Ordinance No. 38	February 5, 2016	Establishes the internal procedures, deadlines, and technical impediments for the implementation of individual amendments, in accordance with Law No. 13.242, of December 30, 2015 (2016 LDO)	BRASIL. Portaria Interministerial nº 38, de 5 de fevereiro de 2016. Dispõe sobre procedimentos e prazos para apresentação e registro das emendas individuais, com indicação de impedimento de ordem técnica de que trata o art. 65 da Lei nº 13.242, de 30 de dezembro de 2015 - LDO/2016, no Sistema Integrado de Planejamento e Orçamento – SIOP. [Interministerial Ordinance No. 38, of February 5, 2016. Provides for the procedures and deadlines for the submission and registration of individual amendments, including the indication of technical impediments referred to in Article 65 of Law No. 13,242, of December 30, 2015 (2016 Budget Guidelines Law – LDO/2016), in the Integrated Planning and Budgeting System (SIOP)]. Diário Oficial da União : seção 1, Brasília, DF, ano 153, n. 25, p. 1, 5 fev. 2016. Available from: https://www.gov.br/transferegov/pt-br/legislacao/portarias/portaria-interministerial-no-38-de-05-de-fevereiro-de-2016 . Accessed on: Jan. 15, 2026.	This ordinance does not address caucus amendments, and no ordinance specifically regulating the execution of such amendments was identified during the review
Joint Ministerial Ordinance No. 38	March 9, 2017	Establishes the internal procedures, deadlines, and technical	BRASIL. Portaria Interministerial nº 38, de 9 de março de 2017. Dispõe sobre procedimentos e cronograma para operacionalização das emendas individuais ao orçamento no Sistema de Gestão de Convênios e Contratos de Repasse	This ordinance does not address caucus amendments, and no

		impediments for the implementation of individual amendments, in accordance with Law No. 13.408, of December 26, 2016 (2017 LDO)	– SICONV, com vista ao atendimento do prazo previsto no inciso I do § 14 do art. 166 da Constituição Federal e no inciso I do art. 69 da Lei nº 13.408, de 26 de dezembro de 2016 – LDO/2017. [Interministerial Ordinance No. 38, of March 9, 2017. Provides for the procedures and timetable for the implementation of individual budget amendments within the System for the Management of Agreements and Transfer Contracts (SICONV), in order to comply with the deadline set forth in item I of § 14 of Article 166 of the Federal Constitution and in item I of Article 69 of Law No. 13,408, of December 26, 2016 (2017 Budget Guidelines Law – LDO/2017)]. Diário Oficial da União : seção 1, Brasília, DF, ano 154, n. 48, p. 74, 10 mar. 2017. Available from: https://www.gov.br/economia/pt-br/assuntos/planejamento/orcamento/orcamentos-anuais/2017/legislacao/emendas/portaria-interministerial-mp-mf-cgu-sgpr-38-de-09-03-2017.pdf . Accessed on: Jan. 15, 2026.	ordinance specifically regulating the execution of such amendments was identified during the review
Joint Ministerial Ordinance No. 10	January 20, 2018	Establishes the internal procedures, deadlines, and technical impediments for the implementation of individual amendments, in accordance with Law No. 13.473, of August 8, 2017 (2018 LDO)	BRASIL. Portaria Interministerial nº 10, de 23 de janeiro de 2018. Dispõe sobre procedimentos e prazos para apresentação, registro e operacionalização das emendas parlamentares individuais de execução obrigatória, e prazos e procedimentos para a superação de impedimentos técnicos, com vistas ao atendimento do disposto no art. 166, §§ 9º a 18, da Constituição Federal. [Interministerial Ordinance No. 10, of January 23, 2018. Provides for the procedures and deadlines for the submission, registration, and implementation of mandatory individual parliamentary amendments, as well as the deadlines and procedures for overcoming technical impediments, in order to comply with Article 166, §§ 9 to 18, of the Federal Constitution. Revoked by Portaria Interministerial No. 221, of May 22, 2020]. Diário Oficial da União : seção 1, Brasília, DF, ano 155, n. 18, p. 143-144, 25 jan. 2018. Available from: https://www.gov.br/transferegov/pt-br/legislacao/portarias/portaria-interministerial-no-10-de-23-de-janeiro-de-2018-revogada-pela-portaria-interministerial-no-221-de-22-de-maio-de-2020 . Accessed on: Jan. 15, 2026.	—
Joint Ministerial Ordinance No. 16	February 6, 2018	Establishes the internal procedures, deadlines, and technical impediments for the implementation	BRASIL. Portaria Interministerial nº 16, de 6 de fevereiro de 2018. Dispõe sobre a execução das programações incluídas ou acrescidas por emendas de bancada estadual de execução obrigatória. [Interministerial Ordinance No. 16, of February 6, 2018. Provides for the execution of budgetary allocations included or increased by mandatory state caucus amendments].	—

		of caucus amendments, in accordance with Law No. 13.473, of August 8, 2017 (2018 LDO)	Diário Oficial da União: seção 1, Brasília, DF, ano 155, n. 28, p. 157, 8 fev. 2018. Available from: https://www.gov.br/economia/pt-br/assuntos/planejamento/orcamento/orcament-os-anuais/2018/legislacao/emendas/portaria-interministerial-mp-segov-no-16-de-6-de-fevereiro-de-2018.pdf . Accessed on: Jan. 15, 2026.	
Joint Ministerial Ordinance No. 77	February 26, 2019	Establishes the internal procedures, deadlines, and technical impediments for the implementation of caucus amendments, in accordance with Law No. 13.707, of August 14, 2018 (2019 LDO)	BRASIL. Portaria Interministerial nº 77, de 26 de fevereiro de 2019. Dispõe sobre a execução das programações incluídas ou acrescidas por Emendas de Bancada Estadual de Execução Obrigatória. [Interministerial Ordinance No. 77, of February 26, 2019. Provides for the execution of budgetary allocations included or increased by Mandatory State Caucus Amendments]. Diário Oficial da União: seção 1, Brasília, DF, ano 157, n. 41, p. 18, 27 fev. 2019. Available from: https://www.gov.br/economia/pt-br/assuntos/planejamento/orcamento/orcament-os-anuais/2019/legislacao/emendas/portaria-interministerial-no-77-de-26-de-fevereiro-de-2019.pdf . Accessed on: Jan. 15, 2026.	—
Joint Ministerial Ordinance No. 78	February 26, 2019	Establishes the internal procedures, deadlines, and technical impediments for the implementation of individual amendments, in accordance with Law No. 13.707, of August 14, 2018 (2019 LDO)	BRASIL. Portaria Interministerial nº 78, de 26 de fevereiro de 2019. Dispõe sobre procedimentos e prazos para operacionalização das emendas parlamentares individuais de execução obrigatória, bem como sobre procedimentos e prazos para a superação de impedimentos de ordem técnica, em atendimento ao disposto no art. 166, §§ 9º a 18, da Constituição Federal. [Interministerial Ordinance No. 78, of February 26, 2019. Provides for the procedures and deadlines for the implementation of mandatory individual parliamentary amendments, as well as for the procedures and deadlines for overcoming technical impediments, in compliance with Article 166, §§ 9 to 18, of the Federal Constitution]. Diário Oficial da União: seção 1, Brasília, DF, ano 157, n. 41, p. 18-21, 27 fev. 2019. Available from: https://www.gov.br/economia/pt-br/assuntos/planejamento/orcamento/orcament-os-anuais/2019/legislacao/emendas/portaria-interministerial-no-78-de-26-de-fevereiro-de-2019.pdf . Accessed on: 15 Jan. 2026.	—
Joint Ministerial Ordinance No. 43	February 4, 2020	Establishes the internal procedures, deadlines, and technical impediments for the implementation of individual	BRASIL. Portaria Interministerial nº 43, de 4 de fevereiro de 2020. [Interministerial Ordinance No 43, of February 4, 2020]. Diário Oficial da União: seção 1, Brasília, DF, ano 158, n. 24-B, p. 1-3, 4 fev. 2020. Available from: https://www.gov.br/transferegov/pt-br/legislacao/portarias/portaria-interministerial-no-43-de-4-de-fevereiro-de-2020 . Accessed on: Jan. 15, 2026.	This ordinance does not address caucus, committee or rapporteur amendments, and no ordinance specifically

		amendments, in accordance with No. 13.898, of 11 November 2019 (2020 LDO)		regulating the execution of such amendments was identified during the review
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Source: elaborated by the author.

In light of these considerations, the Executive retained at least two lawful mechanisms for limiting the execution of parliamentary amendments. The first consists of the adoption of budgetary contingency measures, applicable where, notwithstanding full legal compliance by such amendments, revenue performance proves insufficient to meet the primary fiscal target established in law. The second consists in the identification of technical impediments, applicable where the amendments fail to comply with the broader normative framework governing public expenditure, including the requirements set out in the LDO, the PPA, Law No. 4.320/1964, Supplementary Law No. 101/2000, as well as the relevant constitutional provisions and principles.

Under this latter mechanism, the Executive is authorized not only to verify formal compliance, but also to exercise a considerable degree of discretion in assessing the proposed allocations. As noted above, this review encompasses an examination of whether an amendment is consistent with the objectives of the relevant budgetary action or program, the technical adequacy of the proposed work plan, and the proportionality and feasibility of the allocated resources in light of the project's execution schedule. In practical terms, this authority enables the Executive to assess whether legislative intervention is supported by technical and empirical considerations relevant to efficient public spending and whether, in its judgment, the amendment is reasonably likely to result in the delivery of concrete goods and services. Viewed in this light, the arrangement reflects a qualified form of deference to the Executive's role within the broader governance process.

In this sense, the principal innovation introduced by the reforms appears to lie in the constraints placed on executive discretion over discretionary expenditures. Once parliamentary amendments to the LOA are approved in accordance with the applicable legal framework, the Executive may withhold their execution only in proportion to other discretionary expenditures. In practical terms, this precludes the Executive from selectively withholding expenditures aligned with congressional preferences while fully executing those aligned with its own policy priorities. Although this development appears to affect a longstanding feature of Brazil's

presidentialism — more specifically, the use of budgetary powers for coalition formation and maintenance — it does so without, at least at this level of analysis, violating the separation of powers.

IV.3 PARTIAL CONSIDERATIONS

This chapter sought to reconstruct the sequence of reforms that culminated, in 2019, in the consolidation of the regime of mandatory execution of parliamentary amendments to the LOA. Drawing on the framework developed in Chapter III, the inquiry examined whether this process resulted in either of the two scenarios previously identified: an impairment of the Executive's institutional autonomy or a reallocation to Congress of the Executive's defining authority over budget execution.

The analysis developed in Sections IV.1 and IV.2 suggests that neither scenario is clearly realized at the level of formal institutional design. Consistent with the Executive's defining authority over the implementation of the LOA, the legal framework continues to provide mechanisms for limiting the execution of parliamentary amendments.

Discretionary expenditures, including those arising from amendments, remain subject to proportional contingency measures when revenue performance proves insufficient to meet the primary fiscal target established by law. In addition, amendments are exempt from mandatory execution where technical impediments are identified, understood as failures to comply with the broader normative framework governing public expenditure, including the LDO, the PPA, Law No. 4.320/1964, Supplementary Law No. 101/2000, and the relevant constitutional provisions.

Within this framework, the Executive retains a considerable margin of discretion. Beyond verifying formal compliance, administrative authorities may evaluate the consistency of an amendment with the objectives of the relevant budgetary program, the technical adequacy of the proposed work plan, and the proportionality and feasibility of the allocated resources in light of the execution schedule. This evaluative space allows the administration to assess whether legislative interventions are likely to result in effective public spending and reflects a qualified deference to the Executive's function within the governance process.

From this perspective, the reforms may be understood as effecting a recalibration of executive discretion, rather than a displacement of the Executive's defining authority within the LOA's budgetary process. In this sense, although they may have interfered with a longstanding feature of Brazil's coalitional presidentialism — most notably, the use of budgetary powers by

the President to form and manage legislative support — such interference does not, in itself, imply a violation of the separation of powers.

These considerations therefore delimit the scope of the conclusions reached in this dissertation. They are confined to the formal structure of the mandatory execution regime and its compatibility with the normative account of the separation of powers advanced here. Accordingly, they do not extend to the manner in which these rules were applied in practice, nor to the political dynamics surrounding their implementation — issues that, given their relevance, are briefly addressed in Section V.3.

V CONCLUSION

As noted in the Introduction, the mandatory execution of parliamentary amendments has received limited attention in the legal literature, particularly from the perspective of the separation of powers. Existing studies provide valuable insights into the functioning of the LOA's budgetary process and its political dynamics, but do not fully engage with what may be regarded as the core of the controversy. This concerns the normative content of the principle of separation of powers, its implications for the LOA's budgetary process, and whether the reforms introducing mandatory execution are consistent with those implications.

To the extent that these questions remain open or insufficiently explored, this dissertation has sought to contribute to their examination. To that end, it advances a normative account of the separation of powers consistent with the 1988 Constitution; explores the implications of that account for the structure and operation of the LOA's budgetary process; and, on that basis, assesses whether the reforms introducing the mandatory execution of parliamentary amendments are compatible with those implications. The final part consolidates the findings, answers the research questions, and indicates avenues for further research.

V.1 SUMMARY OF THE RESEARCH

Chapter II addressed the first stage of the inquiry by examining how the principle of separation of powers is defined under Articles 2; 60, §4, item III; and Title IV of the 1988 Constitution. Although these provisions confer legal status on the principle, Brazilian constitutional scholarship does not converge on a shared normative account of its content. In response, Chapter II mapped and systematized the main interpretive approaches in the literature, with the aim of identifying the analytical criteria that a normative account of the separation of powers would be expected to satisfy to remain compatible with those provisions.

This analysis revealed that, despite their differences, these approaches rest on a common premise: the separation of powers is understood as a safeguard that emerged within modern constitutionalism to protect political liberty. From this premise, two assumptions follow. First, the separation of powers performs a dual role, simultaneously constraining political authority and structuring its legitimate exercise. Second, it possesses intrinsic normative value, independent of related principles such as checks and balances.

These assumptions closely resemble those underlying Vile's formulation of the doctrine. In its most abstract form, Vile's account holds that the preservation of political liberty

requires dividing government into three distinct branches (legislative, executive, and judiciary), each corresponding to a specific and identifiable function. Each branch must confine itself to its own function and prevent encroachment upon the others. Moreover, the officials who compose these institutions should remain distinct, ensuring that no individual simultaneously exercises authority in more than one branch.

Although this formulation offers a coherent normative account of the principle, it provides limited guidance on how governmental functions should be exercised in practice to secure political liberty. This limitation becomes more apparent when one considers that the dispersion of authority among multiple political actors and institutions may also be found in non-democratic settings. In this light, the separation of powers, as conceived within modern constitutionalism, appears to involve more than institutional differentiation.

Chapter III explored this possibility further through Waldron's work. Rather than grounding the doctrine primarily in political liberty, Waldron locates its normative foundation in the rule of law, understood as an ideal of political morality affirming the primacy of law and legal institutions in governance. On his account, the rule of law comprises two interrelated sets of principles: formal and procedural.

The formal principles require that legal norms be general, clear, public, stable, and prospective, thereby enabling individuals to know and rely on them in ordering their lives. The procedural principles concern the application of those norms. They require that penalties, coercion, or serious losses imposed by the state occur only through fair trials before impartial and independent courts, with full guarantees of due process, including the rights to counsel, to present and challenge evidence, and to receive a reasoned decision.

These principles, however, would be difficult to sustain in the absence of the separation of powers. Legal norms are unlikely to remain general, clear, public, stable, and prospective where the same authority is responsible for their formulation, enforcement, and adjudication, or where enforcement and adjudication precede enactment. Nor are trials likely to be fair, impartial, and independent — fully ensuring due process — if the authority that crafts the norms also enforces them and settles disputes under them, or if adjudication and enforcement occur before the norms are made public and societal actors have a meaningful opportunity to adjust their conduct accordingly.

Engaging with concerns of this kind, Waldron derives two normative standards that specify how the separation of powers must operate to sustain the rule of law: articulated governance and integrity. These standards describe the conditions under which the division of

governmental functions, traditionally referred to as the separation of powers, fulfills its normative purpose.

Articulated governance refers to the orderly sequencing of governmental functions. The legislative, executive, and judicial functions must not only remain distinct, but must also be exercised in that specific order. When this standard is observed, governance assumes the form of a process unfolding through successive stages. It begins with the state identifying a potential course of action. Policymakers then deliberate on its scope and formulate general norms, which are debated and adopted by elected representatives through legislative procedures. Once enacted, these norms are communicated to the public and to the administrative agencies responsible for their enforcement. Citizens and firms are afforded time to internalize the new rules and adjust their conduct, while agencies incorporate them into regulatory practice and develop mechanisms of oversight. Disputes or alleged violations may then arise, in which case they are brought before the courts.

Integrity requires each branch to perform its assigned role within this process. Under this standard, Waldron argues that the legislature should confine itself to its designated work — legislative work —, which does not extend to addressing the specific circumstances of any particular individual, X. The executive, by contrast, is responsible for developing and implementing strategies to give effect to enacted legislation, a task that may require responding to X's concrete situation, as well as for exercising prosecutorial competences. The judiciary, in turn, should fulfill the adjudicative function of interpreting and applying the legal norms most appropriate to each case, thereby protecting X's fundamental rights and guarantees from undue restrictions, whether arising from private disputes or acts and omissions of the executive.

Although Waldron further illustrates this point with examples, his argument gains analytical clarity when read alongside the requirements identified by Kazai. Drawing on both accounts, Chapter III argued that integrity comprises at least three interrelated notions: defining authority, institutional autonomy, and the prohibition of both the relinquishment and the usurpation of function.

Drawing on Kazai, the defining authority of each branch may be understood as a layered concept. First, it refers to a subset of competences associated with each branch's core function. Second, these competences concern matters central to the organization of the polity. Third, they are reserved for each branch on an exclusive basis, in the sense that they are not, in principle, susceptible to delegation. Finally, this exclusivity is justified by the institutional characteristics of each branch — its organization, composition, purpose, and decision-making procedures —, which makes it especially suited to exercise those competences. Understood in these terms, the

legislative, executive, and judiciary branches each hold exclusive competences of particular importance that give concrete expression to their respective core functions and are not, in principle, open to delegation, since their original allocation is grounded in each branch's institutional design.

Institutional autonomy, in turn, addresses the conditions that make the exercise of the branch's core function possible. A branch can be said to control its core function insofar as it retains autonomy over its internal organization, personnel, procedures, and operations. The competences associated with institutional autonomy are likewise not susceptible to delegation, although for reasons distinct from those underlying the defining authority. Whereas defining authority rests on considerations of functional suitability, institutional autonomy serves to protect the independence of each branch.

Kazai's third requirement concerns the prohibition of both the relinquishment and the usurpation of function. Whereas the first requirement delineates the sphere in which each branch enjoys, at least formally, exclusive authority over its core function, and the second addresses the institutional conditions necessary for its exercise, the third concerns the manner in which that function is carried out in practice. Within this framework, Kazai states that each branch should remain confined to the exercise of its own function and, as a result, be insulated from undue control or influence over the others.

Considered jointly, these standards delineate the normative framework for assessing the separation of powers across the successive stages of the LOA's budgetary process.

The formulation of the LOA bill corresponds to the first stage of the governance process, in which potential courses of action are identified and policymakers — elected officials, permanent members of each branch, and representatives of civil society, advocacy groups, and academia — deliberate on their scope. At this stage, the Judiciary and the Legislative branches prepare their respective budgetary proposals, with the participation of their own policymakers, and submit them to the Executive branch, which is constitutionally precluded from altering their content. The Executive follows a similar procedure with respect to its own budget, consolidates its proposal with those of the Legislative and the Judiciary, and drafts the bill as a whole. The bill is then submitted to Congress by August 31.

The deliberation, amendment, and approval of the bill constitute the second stage of the governance process, in which the draft is debated and adopted by elected representatives through legislative procedures. From the perspective of the standard of integrity, the assessment of this stage turns on three elements. First, the authority to deliberate on, amend, and approve the bill must rest with Congress. As discussed in Chapter III, a contextual interpretation of

Articles 49, items V and XI, 62, 68, and 166, §§ 2 and 3, of the 1988 Constitution, supports the view that these competences are exclusive and non-delegable. Second, Congress must enjoy sufficient institutional autonomy to perform them. Third, they must be exercised effectively, without entailing either the relinquishment of the legislative function or the usurpation of another governmental function.

The implementation of the LOA corresponds to the third stage of the governance process, when the enacted norms are put into effect. From the perspective of the standard of integrity, the assessment of this stage likewise turns on three elements. First, the authority to implement the LOA must rest with the Executive branch. A contextual interpretation of Articles 84, items IV and XXIV, 85, items VI and VII, and 87, items II and IV, of the 1988 Constitution, is consistent with the understanding that these competences are exclusive and non-delegable. Second, the Executive must enjoy sufficient institutional autonomy to perform them. Third, implementation must be carried out effectively, without entailing either its relinquishment or the usurpation of another governmental function.

With this framework in place, the inquiry turns to how the reforms that introduced the mandatory execution of parliamentary amendments relate to the normative standards of the separation of powers. Given the widely shared understanding that these reforms originated in an autonomous legislature, seeking greater control over resource allocation, the account developed in this chapter narrows the analysis to two specific points.

The first concerns institutional autonomy, one of the dimensions of integrity. As argued earlier, integrity presupposes that each branch retains sufficient control over its internal affairs to perform its core function. This includes the capacity to prepare its own budgetary proposal without undue external interference. The reforms would raise concerns under this standard if they enabled one branch to determine, revise, or condition the budgetary proposal of another, thereby undermining the autonomy required for the exercise of their respective functions. This would be the case, for example, if the Legislative branch were able to formulate the Executive's budgetary proposal.

The second point concerns defining authority, another element of integrity. As argued throughout this chapter, each branch is vested with exclusive and non-delegable competences grounded in its core function. The reforms would conflict with this dimension if they resulted in the reallocation of such competences from one branch to another, thereby blurring the distinction between governmental functions. This concern would arise, for instance, if the Legislative branch were to assume responsibility for the implementation of the LOA, in tension

with a contextual interpretation of Articles 84, items IV and XXIV, 85, items VI and VII, and 87, items II and IV, of the 1988 Constitution.

On this basis, Chapter IV argues that the reforms introducing the mandatory execution of parliamentary amendments do not, in themselves, violate the separation of powers. Following these reforms, each branch retained the competence to prepare its own budgetary proposal, while the Executive retained the authority to consolidate those proposals without alteration and to draft the LOA bill as a whole. Congress continues to deliberate on, amend, and approve the LOA, and the Executive remains responsible for its execution and for submitting the corresponding reports to Congress and to oversight bodies.

More specifically, following the reforms, the Executive retained at least two lawful mechanisms for limiting the execution of parliamentary amendments. The first consists of the adoption of budgetary contingency measures, applicable where, notwithstanding full legal compliance by such amendments, revenue performance proves insufficient to meet the primary fiscal target established in law. The second consists in the identification of technical impediments, applicable where the amendments fail to comply with the broader normative framework governing public expenditure, including the requirements set out in the LDO, the PPA, Law No. 4.320/1964, Supplementary Law No. 101/2000, as well as the relevant constitutional provisions and principles.

Under this latter mechanism, the Executive is authorized not only to verify formal compliance, but also to exercise a considerable degree of discretion in assessing the proposed allocations. As noted above, this review encompasses an examination of whether an amendment is consistent with the objectives of the relevant budgetary action or program, the technical adequacy of the proposed work plan, and the proportionality and feasibility of the allocated resources in light of the project's execution schedule. In practical terms, this authority enables the Executive to assess whether legislative intervention is supported by technical and empirical considerations relevant to efficient public spending and whether, in its judgment, the amendment is reasonably likely to result in the delivery of concrete goods and services. Viewed in this light, the arrangement reflects a qualified form of deference to the Executive's role within the broader governance process.

In this sense, the principal innovation introduced by the reforms appears to lie in the constraints placed on executive discretion over discretionary expenditures. Once parliamentary amendments to the LOA are approved in accordance with the applicable legal framework, the Executive may withhold their execution only in proportion to other discretionary expenditures. In practical terms, this precludes the Executive from selectively withholding expenditures

aligned with congressional preferences while fully executing those aligned with its own policy priorities. Although this development appears to affect a longstanding feature of Brazil's presidentialism — more specifically, the use of budgetary powers for coalition formation and maintenance — it does so without, at least at this level of analysis, violating the separation of powers.

V.2 RESPONSES TO THE RESEARCH QUESTIONS

The first research question set out in the Introduction concerns the normative content of the principle of separation of powers. Chapter III advanced a normative account that has, so far, proven compatible with Articles 2, 60, §4, item III, and Title IV of the 1988 Constitution. Under this account, the separation of powers is understood as a principle grounded in the rule of law that differentiates political authority into at least three governmental functions. These functions are to be exercised in accordance with the normative standards of articulated governance and integrity, through which the rule of law is more likely to be upheld.

In institutional terms, this differentiation is reflected in the existence of at least three branches, each assigned a distinct function and, for the most part, composed of separate personnel. The exercise of these functions follows a structured sequence, in which the legislative function precedes execution, and adjudication is exercised last. In this framework, each branch is vested with exclusive and non-delegable competences derived from its core function, enjoys sufficient autonomy to perform that function, and is expected to exercise it effectively, without relinquishment or usurpation.

The second research question concerns the implications of this normative account for the structure and operation of the LOA's budgetary process. Conventionally, the budgetary process is described as comprising four stages: (i) formulation, in which the Executive drafts and submits the budget bill to the Legislature; (ii) deliberation and approval, during which Congress debates, amends, and enacts the annual budget; (iii) execution of the enacted legislation, carried out by the Executive; and (iv) oversight of budgetary execution, exercised primarily by the Legislature.

However, not all of these stages appear to be grounded in the separation of powers as understood in the normative account advanced in this dissertation. Oversight, for instance, is more closely associated with checks. In this sense, when examined through the lens of the separation of powers, the LOA's budgetary process may therefore be described as summarized in Figure 4. First, all branches participate in the formulation of the LOA bill. The Legislative

and Judicial branches prepare and submit their respective budgetary proposals to the Executive. The Executive, in turn, prepares its own proposal, consolidates it with the others without alteration, and drafts the bill as a whole. Subsequently, Congress deliberates on, amends, and approves the bill through legislative procedures. Once enacted, the process moves to the execution phase, in which the Executive performs its core function by implementing the LOA and submitting the corresponding reports to Congress and oversight bodies.

The final research question is whether the reforms introducing the mandatory execution of parliamentary amendments are consistent with these implications. Chapter IV argues that they are. Following the adoption of these reforms, each branch retained the competence to prepare its own budgetary proposal, while the Executive retained the authority to consolidate those proposals without alteration and to draft the LOA bill as a whole. Congress continues to deliberate on, amend, and approve the LOA, and the Executive remains responsible for its execution, as well as for reporting to Congress and to oversight bodies.

The principal innovation introduced by the reforms lies instead in the constraints imposed on executive discretion over discretionary expenditures. Once parliamentary amendments to the LOA are adopted in accordance with the applicable legal framework, the Executive may withhold their execution only in proportion to other discretionary expenditures. In practical terms, this precludes the selective withholding of expenditures aligned with congressional preferences while fully executing those aligned with the Executive's own priorities. Although this shift curtails a longstanding feature of Brazil's presidentialism, it does so without, in itself, amounting to a violation of the principle of separation of powers.

V.3 PROPOSED RESEARCH AGENDA

Although the introduction of the mandatory execution of parliamentary amendments does not, in itself, amount to a violation of the principle of separation of powers, the same conclusion does not extend to their implementation. As noted in the Introduction, the consolidation of this new regime coincided with the emergence of the so-called "secret budget", an episode that warrants separate and careful examination.

In broad terms, the secret budget operated through general rapporteur amendments to the LOA. Under this arrangement, such amendments served to accommodate requests from deputies and senators without the public identification of those legislators. Their subsequent implementation occurred without assessment of their consistency with the objectives of the relevant budgetary actions or programs, the technical adequacy of the proposed work plans, or

the proportionality and feasibility of the allocated resources in light of the projects' execution schedules.

The consequences of this arrangement can be illustrated by cases such as that of Santa Quitéria, in the State of Maranhão. In 2020, the municipality reported 96,800 emergency specialist consultations — nearly four per resident — despite having declared none in the previous year²⁹². It also claimed 45,200 general medical consultations, 49,000 cholesterol tests, 52,800 liver examinations, and 59,800 erythrograms, a test that had not been reported before or afterward.

That year alone, the municipality reported 96,800 emergency specialist consultations — nearly four per resident — despite having declared none in the previous year. It also claimed 45,200 general medical consultations, 49,000 cholesterol tests, 52,800 liver exams, and 59,800 erythrograms, a test never reported before or afterward.

The municipality further declared 3,101 confirmatory HIV tests, exceeding the figure reported by São Paulo, which, despite a population of approximately 12.4 million inhabitants, registered only 2,976 such tests during the same period²⁹³. On the basis of these unreliable data, federal transfers to the municipality increased from R\$ 280,000 in 2020 to R\$ 4.6 million in 2021 through parliamentary amendments.

Similar patterns were observed in other municipalities²⁹⁴. The implausibility of the reported figures — particularly when assessed against population size and service capacity — would be expected to prompt institutional scrutiny. Yet the Executive failed to implement verification procedures, rendering the destination, purpose, and effects of public expenditures opaque.

Comparable deficiencies were observed in the allocation of infrastructure resources. Between 2020 and 2023, more than R\$ 3.5 billion in parliamentary amendments were directed to road-paving projects lacking demonstrable necessity or consistent technical justification²⁹⁵.

²⁹² PIRES, Breno; GORZIZA, Amanda; BUONO, Renata. O milagre da multiplicação de consultas. **Piauí**, Rio de Janeiro, 25 jul. 2022. Available from: <https://piaui.folha.uol.com.br/milagre-multiplicacao-consultas/>. Accessed on: April 8, 2025.

²⁹³ PIRES, Breno. Farra ilimitada. **Piauí**, Rio de Janeiro, jul. 2022. Available from: <https://piaui.folha.uol.com.br/materia/farra-ilimitada/>. Accessed on: April 8, 2025.

²⁹⁴ CARDOSO, Rafael. Maranhão tem 62 municípios suspeitos de inserir dados falsos para receber recursos da saúde indevidamente. **G1**, Maranhão, 28 abr. 2023. Available from: <https://g1.globo.com/ma/maranhao/noticia/2023/04/28/maranhao-tem-62-municipios-suspeitos-de-inserir-dados-falsos-para-receber-recursos-da-saude-indevidamente.ghtml>. Accessed on: April 8, 2025.

²⁹⁵ FERREIRA, Flávio; BORGES, André. Governo injeta R\$ 3,5 bi em emendas para pavimentação sem critério técnico, diz TCU. **Folha de S.Paulo**, São Paulo, 13 nov. 2024. Available from: <https://www1.folha.uol.com.br/poder/2024/11/governo-injeta-r-35-bi-em-emendas-para-pavimentacao-sem-criterio-tecnico-diz-tcu.shtml>. Accessed on: April 8, 2025.

An audit by the TCU found that, in many cases, the targeted areas lacked basic infrastructure — such as stormwater drainage — resulting in rapid pavement deterioration and significant financial losses. Subsequent investigations by the Office of the Comptroller General (*Controladoria-Geral da União, CGU*) identified recurrent execution failures, including the use of substandard materials, asphalt layers thinner than contractually specified, and systematic overpricing across at least ten states²⁹⁶.

The implementing agency — the São Francisco and Parnaíba Valleys Development Company (*Companhia de Desenvolvimento dos Vales do São Francisco e do Parnaíba, Codevasf*) — also lacked the technical and administrative capacity to manage the scale and complexity of the projects entrusted to it²⁹⁷. Oversight mechanisms proved inadequate, and post-construction inspections were frequently absent. Project allocation was disproportionately concentrated in the electoral constituencies of members of Congress, many of whom are currently under investigation for cartel formation, embezzlement, and corruption.

These events indicate that the implementation of the reforms generated at least two points of tension with the account of the separation of powers advanced in this dissertation. The first arises in the deliberative stage, when parliamentary amendments to the 2020 LOA were introduced in ways that sit uneasily with the normative framework governing public expenditure, including the LDO, the PPA, Law No. 4.320/1964, Supplementary Law No. 101/2000, and the relevant constitutional provisions. The second concerns the Executive's conduct, which, from 2020 onward, implemented these amendments despite their non-compliance with that framework.

In this regard, these developments suggest that the operation of mandatory budget did not unfold under the conditions assumed by their formal design. Rather than revealing an inherent incompatibility with the separation of powers, they underscore the need for a more precise examination of the ways in which implementation practices altered, circumvented, or displaced the legal and institutional constraints governing budgetary deliberation and execution. Such an inquiry may further illuminate the evolving relationship between the Legislative and Executive branches in Brazil.

²⁹⁶ PARREIRA, Marcelo. CGU encontra asfalto fino, de baixa qualidade e superfaturado em obras contratadas pela Codevasf em 10 estados. **G1**, Brasília, DF, 29 jul. 2024. Available from: <https://g1.globo.com/politica/noticia/2024/07/29/cgu-encontra-asfalto-fino-de-baixa-qualidade-e-superfaturado-em-obras-contratadas-pela-codevasf-em-10-estados.ghtml>. Accessed on: April 8, 2025.

²⁹⁷ MEDEIROS, Lydia. Codevasf é símbolo da velha política na era digital. **Congresso em Foco**, Brasília, DF, 6 mar. 2025. Available from: <https://www.congressoemfoco.com.br/coluna/106744/codevasf-e-simbolo-da-velha-politica-na-era-digital>. Accessed on: April 8, 2025.

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APPENDIX A – THE USE OF ARTIFICIAL INTELLIGENCE

Table 13 – Disclosure of Artificial Intelligence Tools and Services Used in the Dissertation

Section	Artificial Intelligence Tool or Service	Version	Intended Purpose	Prompts Employed	Observations
II.1.2	ChatGPT	GPT-5	Refinement of the categorization presented in Table 1	“Could you please help me refine the categorization set out below? I believe the definitions contain inconsistencies”	ChatGPT identified potential issues and suggested alternative formulations. The author indicated which of these aligned with her concerns, and the tool proposed corresponding adjustments. The author evaluated these suggestions and finalized the categorization, including the selection of the accompanying examples. Further changes resulted from general revision of the dissertation, as described in Section I.3.

Source: elaborated by the author.