

## Agenda control and budget reform in Brazil and the United States, 1996-2008<sup>1</sup>

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“Einstein believed that inertia would not exist for something spinning in a completely empty universe. Instead, inertia was caused only by rotation *relative* to all the other objects in the universe” (Isaacson 2007, p. 251, his emphasis)

“...inaction results from the operations of political influence and political institutions...”  
(Crenson 1971, p. 27)

Over the last twenty years, political scientists from various analytical traditions, although mostly affiliated to historic institutionalism, have attempted to explain processes of creation and change of political institutions<sup>3</sup>. Something that used to be an obscure analytical issue became the main focus of many studies from the historic institutionalism perspective and also for some scholars of the rational choice approach<sup>4</sup>, who mainly dialogue with Douglass North (1990, 1995). This literature has advanced greatly in explaining institutional creation or change<sup>5</sup>, but not so much in analyzing the stability of institutions, with the obvious exception of explanations based on path dependent reproduction (Pierson 2000; Bennet and Elman 2006).

The main goal of this essay is to contribute to this literature on institutional dynamics by exploring the power mechanisms that sustain budgeting institutions in Brazil, in the face of strong incentives for institutional change<sup>6</sup>. The paper analyzes the absence of a Mandatory Budget from 1988 to 2008 and the stability of the Authoritative Budget institution. The stability of this budget institution during the last twenty years is even more interesting if we consider three things: 1) the fact that the Brazilian political

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<sup>4</sup> Knight (1992); Knight and Sened (1995); Shepsle (2001).

<sup>5</sup> Krasner (1984); Schickler (2001); Thelen (1999, 2003, 2006); Hacker (2004); Streeck and Thelen (2005); Tsai (2006); Weyland (2008); Taylor (2009); Mahoney and Thelen (2009).

<sup>6</sup> Lindner (2003) and Stewart (1989) also study processes of stability and change in budgeting institutions.

system has multiple veto players with conflicting interests (Mainwaring 1991; Tsebelis 1995); 2) that the political bargain facilitated by the Authoritative Budget faces strong academic (Pereira and Mueller 2004) and bureaucratic (Pontes Lima 2003) criticism; 3) and that the idea of implementing a Mandatory Budget is recurrent in Brazil's institutional reform agenda.

The Authoritative Budget provides the Executive with full control over macroeconomic decisions. It also gives, most importantly for the argument I spell out below, the Executive-led coalition considerable *distributive advantage*, because it allows the president to execute most of the budget amendments proposed by coalition members. In addition, the Authoritative Budget allows the Executive to time the execution of part of the amendments in order to gain more support on the floor occasionally. This is an *strategic advantage*.

Three theoretical points are addressed. The first is the manner in which the legislative agenda is controlled by the Executive and how this works as a power-related mechanism of institutional reproduction. The second point is how the ideas and interests of political actors are organized in frames used by them to defend or attack institutions. This makes it possible to evaluate how the long and short term interests of political actors interact through the frames used to defend or attack other ideas, showing how institutional alternatives are shaped. Finally, there is a possible theoretical contribution in analyzing how an entrepreneur – in this case, senator Antonio Carlos Magalhães – fails, partially, when interacting with institutional arrangements controlled by the Executive.

Specifically for the Brazilian case, this essay helps to think how the multitude of political actors affect the country's institutional dynamics, traditionally associated with gradual and incremental processes of institutional change (Whitehead and Sola 2006, p. 7; Power 2009, p. 12; for a defense of incrementalism as a way to foster consensus, see Armijo et. al 2006, p. 781). This essay shows how the political mechanism that allows for Executive-led policy change is also the source of budgeting institutions' stability. In other words, if the Executive has relative success in having its agenda approved by Congress (Figueiredo and Limongi 1999, 2000; Santos 2002), it is also successful in maintaining certain budgeting institution through the same mechanism.

The main theoretical argument to be made is that understanding how control over the political agenda is exercised (Moe 2005) can be a good method to examine what is the capacity of each political actor or political group to maintain or change existing

institutional frameworks. The study of non-decisions, therefore, is not only fundamental, but it has also been highly neglected by the literature on Brazilian political institutions<sup>7</sup>. When ignored, these non-decisions – or institutional stability without path dependence – mask as inertial a process that is dynamic and full of conflicts<sup>8</sup>.

### **I) Institutional stability: agenda control as a power mechanism**

The historical institutionalist perspective on institutional dynamics has strong roots in path dependence studies that “traditionally underline institutional continuity instead of institutional change” (Mahoney and Thelen 2009, p. 8). Stability is treated in this essay as the result of an endogenous and dynamic process, in which the legislative agenda control mechanism operates to maintain the status quo despite strong external pressure. In this sense, it is not enough to say that “institutions disproportionately allocate resources to actors who are already powerful, precisely because the powerful design them this way” (Mahoney and Thelen 2009, p. 8-9). It is necessary to further identify the inner workings of the mechanisms that allow for strong actors to shape the institutions in a way that suits them. In this essay, the control over the legislative organizations by the majority in Congress led by the Brazilian Executive is the mechanism that explains the allocation of resources to powerful political actors.

The stability processes and institutional changes depend on actors and power relations between them. A broad definition of power entails the capacity of an actor or political group to secure its preferred result, having the luxury of ignoring at least part of the opponents’ choices (Goodin 1996, p. 15-16). In this process, it is fundamental to have the control of the agenda, because “the capacity of one person or group to control the actions and choices of others – or, better yet, to secure its desired outcomes without regard to anyone else’s actions or choices – is what politics is all about”. (Schattschneider 1960, p. 68, cited by Walker 1977). If institutional stability is explained by the fact that current institutions provide distributive advantage to those

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<sup>7</sup> Exceptions are Diniz (2005) and Mancuso (2007). For a somewhat similar argument regarding public policies in the United States, see Maltzman and Shipan (2008).

<sup>8</sup> The lack of path dependence in the case analyzed here is due to the fact that the Executive’s prerogative to control the execution of the budget – the Authoritative Budget (*Orçamento Autorizativo*) – was not a *contingency*, but a institutional choice very much in line with the interests of the Executive in several moments of the country’s political history (see Praça 2008). I adopt Mahoney’s (2000) definition that institutional stability processes can only be characterized as path dependent if the institution’s genesis is contingent and without theoretical explanation. Gaddis (2002, p. 64) views contingent events as *the* cause of institutional genesis and change.

that have sufficient power to change it (Knight 1992), it is clear that ensuring such stability requires the continuous, sometimes invisible, mobilization of political support (Mahoney and Thelen 2009, p. 1).

An outline of Mahoney's argument (2000) on institutional stability is in order because, alongside Moe (2005), it helps to think about institutional stability even without path dependent mechanisms, as in the case study of this essay. Mahoney (2000) draws from Collins (1994) four analytical sociological perspectives that may explain institutional reproduction in path dependent processes. They are the utilitarian perspective; the functionalist perspective; the power-related perspective and the legitimacy-related perspective.

The power-related perspective is the most relevant for this essay. Just like the utilitarian perspective, this one supposes that actors make decisions considering relative costs and benefits created by the institution. But it also emphasizes the fact that institutions distribute costs and benefits in a unequal manner in the political system (Knight 1992), and that actors with different resources will have conflicting interests regarding institutional reproduction. In other words, losers will seek institutional change.

Why is this analytical perspective the best to understand budget institutional stability? Because it matters less if a institution is reproduced because the benefits from change are considered insufficient (utilitarian perspective) or because this institution has consequences perceived as positive to the political system as a whole (functionalist perspective). Ultimately, the decision to either change or maintain an institution is in the hands of the political group that has the power to make such a decision. In this case, they are the actors who control the political agenda and have the necessary majority to make a decision or avoid an undesirable one.

I will draw on Moe's (2005) suggestion that a good way to apply the concept of political power empirically is to analyze who controls the legislative agenda of institutional change. This suggestion was originally made by Bachrach e Baratz (1963). Although these studies start from very different analytical perspectives – Moe (2005, p. 215) criticizes rational choice institutionalists, while Bachrach and Baratz (1963) criticize pluralists such as Robert Dahl (1961) – they make the same argument that political elites don't necessarily win conflicts by crushing the opposition, but, more subtly, by avoiding that decisions over oppositions' proposals be taken. This agenda control is what they call "the second face of power" (Bachrach and Baratz, 1962).

I consider the control over the legislative agenda as a mechanism through which the Brazilian Executive maintains certain budgeting institutions of interest. Following Hedström and Swedberg (1998, p. 7), suppose we observe a systemic relation between entities *I* and *O*. To explain the relation between them, we search for a mechanism, *M*, that under the influence of *I* produces *O*. In the case study of this essay, *I* would be the policy windows that put the idea of a Mandatory Budget on the public agenda; *O* would be the final result, maintaining the Authoritative Budget system, and *M* would be the mechanism through which the political actors with more power obtain this result.

One possible way to link Mahoney's (2000) discussion to empiric cases that are not path dependent (as the one in this essay) is to adopt Moe's (2005, p. 223) suggestion. He discusses two types of agenda control, the second of which is the mechanism *M* considered in this essay. The first one is when actor X denies actors Y, Z... the possibility of preserving the *status quo* so that the alternatives preferred by the actor X are accepted. This type of agenda control is related to the "positive agenda power", defined by Cox (2000, p. 173), as the ability to initiate the next step in a bill's progress towards passage. The second way of controlling the agenda happens when actor A uses its institutional prerogatives not to deny the status quo to actor B, but to deny him the possibility of putting forward other alternatives in the legislative agenda.

Besides evaluating how the actors exercise power, it is also fundamental to analyze from where do the alternatives on the legislative agenda come from – in this case, the ideas about Mandatory Budget in Brazil. It is not enough to notice how the proposal is processed by the political system; it is also relevant to pay attention to how the institutional options are molded. The next section of this article is about the interaction between ideas and interests and how they determine the *content* of institutional reform.

## **II) Ideas, interests, and budgeting institutional reform**

The interaction of interests and ideas is essential to understand the dynamics of institutional change and stability. This section reviews part of the literature on the subject, points out the main pending theoretical questions, and discusses how the analysis of frames can help clarify the complicated relation between ideas and interests. Two things are necessary for this to happen: first, one must differentiate short term and

long term interests; then a *minimalist* definition of “ideas” must be adopted, helping to rid this concept of the weight of “ideology”.

There is a clear connection between this theoretical overview and the general goal of explaining how the Executive control over the agenda of the Legislative was used as a power mechanism to block ideas of mandatory budgeting in Brazil. I adopt Blyth’s (2003, p. 702) perspective, according to which “ideas can be seen as power resources used by self-interested actors or as weapons in political struggles that help agents achieve their ends. Such an approach obviously is compatible with rational choice and is of great theoretical importance. It would be a mistake, though, to limit ideas to such a role and to assign analytical priority to structurally given interests as a matter of course”. This rational choice perspective Blyth mentions limits the role of ideas and gives analytical priority to structurally defined interests. Three much cited historic institutionalists – Kathleen Thelen, James Mahoney, and Peter Hall – criticize this analytic strand.

They point out the need to disentangle ideas from short term and long term interests of the political actors, although that is a hard task (Taylor 2008, p. 118). According to Mahoney and Thelen (2009, p. 28), it is fundamental to separate the short term and long term behavioral motivations of actors. A group of politicians that today agree with the existence of a certain institution may also be interested in its demise over the long run<sup>9</sup>.

This echoes Peter Hall’s (1997, p. 197) argument that “most people have multiple interests, often associated with the multiple roles they play in the world, some of which conflict with each other, and many of which are subject to multiple interpretations. Faced with a given issue, then, the actors may have trouble identifying their interests clearly, especially with regard to macroeconomic issues, which are frequently difficult to understand. Thus, on many of the most important economic questions of the day, it cannot always be said that the interests of a group or individual

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<sup>9</sup> That was the case when the Brazilian Legislative approved the constitutional amendment number 32, in September of 2001, partially limiting the Executive powers to issue *Medidas Provisórias* (Executive decrees). Two parliamentary interests became evident in this case: the short term one to participate in the coalition pro-Fernando Henrique Cardoso (1995-2002), and silence the controversial matter about the President’s re-issuing of *Medidas Provisórias*; and the long term one, limiting the presidential decree power, thus empowering the Legislative as a collective actor. The amendment was approved during the end of Cardoso’s second term, long after he had approved the bulk of his Legislative agenda. On the effects of this institutional change, see Pereira, Power and Rennó (2008); and Limongi and Figueiredo (2003).

are ‘given’ by their socioeconomic position. On the contrary, those interests have to be derived via a process of interpretation”<sup>10</sup>.

I believe it is possible to partially bring together the different understandings of interests in rational choice theory and historic institutionalism. Considering the criticism spelled out above, two adjustments might be made to rational choice’s theory of interests. The first is related to the *timing* aspect of interests. It is useful to differentiate an actor’s short and long term time horizons and interests associated to each of them. The second adjustment is related to how actors express their interests. The framing of ideas both reveals and obscures interests and a more comprehensive account of a certain actor’s interests in a given moment has much to gain with the analysis of the frames mobilized by this actor.

Before explaining frames, a quick caveat regarding the role of ideology is in order. The synthesis of historical institutionalist and rational choice frameworks will be more successful if the cases studied allow for a minimalistic definition of “ideas”, unattached of ideological content. According to Campbell (2004, p. 93), ideas can be both profound and underlying assumptions that guide the background of the political debate, and also the alternatives that refer to policies or institutions mobilized directly by the political elite on the foreground of the debate. I opt for the second definition, observing that the first can easily be associated to some current definitions of ideology.

Is ideology at all useful as a possible source for ideas regarding budgeting institutional arrangements? Mahoney (2005, p. 322) contends that when actors are in a position to change institutional arrangements, “many ideologies can be and are cast aside in the face of other, more important competing interests”. Bawn (1999, p. 304) cites two possible roles of ideology. It either serves as a cognitive shortcut to assess the possible behavior of political actors towards the electorate (Downs 1957), or as a source of preferences on the subject Y when there is no present interest on this subject, something that can happen to a politician as well as a voter. In other words, “Ideology is critical to politics because it causes people to have preferences and opinions about issues in which they have no direct stake” (Bawn 1999, p. 303). Is this the case regarding budgeting institutions in Brazil?

Although the authors that associate certain political choices solely on the grounds of the ideology of the actors involved are few (e.g., King 1973a, 1973b), part of

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<sup>10</sup> See also Hall (2005, p. 149-151).

the literature on budgeting institutions associate a group X of institutions to a Y fiscal effect (Alesina and Perotti 1996; Heller 1997). Therefore, there is a good argument to be made in the sense that political actors will take into account their fiscal preferences (easily associated with ideological beliefs) when they choose budgeting institutions. However, in the case studied later on in this essay, the actors that choose either for one set of budgeting institutions or another are congressmen. The congressmen's fiscal preferences will have a diminished role in institutional choice for two reasons. The first is that, in presidential regimes, congressmen are not accountable for the country's macroeconomic policies (Cheibub 2006, p. 353; Carreirão 2004, p. 192; Samuels 2004, p. 9). The second is that other interests of the congressmen will be more salient than ideology on this issue. Remembering Bawn's (1999) point, the actors that choose budgeting institutions have a direct stake in the policies that may result from their option. This interest is determined, among other reasons by the fact that congressmen believe that budget amendments are a good way of bringing pork to their districts. Therefore, I opt to disregard ideology in this discussion.

According to Blyth (2003, p. 700), ideas are used to “delegitimize, contest, and refashion existing institutions”. In order to delegitimize or defend an institution it is necessary to speak for or against it. These discourses are frames. The next section explains what frames are and how they can help scholars who study ideas, interests and institutions to analyze short and long term interests of political actors.

### **III) Frames and the unveiling of interests**

A Brazilian writer most famous for sketching an accurate portrait of the Brazilian middle class once wrote: “A Turkish aristocrat was in France and got to know and love a white wine bottled by Chateau Carbonnieux in Bourdeaux. He brought it home and soon the wine became the Turkish royalty's favourite. But the consumption of any alcoholic beverage is prohibited by the Coran. The dilemma was creatively solved by a seventeenth century sultan who authorized importing the wine slightly changing the label. The story shows how rulers can make their own label when the truth is not convenient” (Veríssimo 1997, p. 85).

The seventeenth century sultan did what politicians do on a daily basis: frame a subject in a way as to convince an audience about a certain point of view. He selected an aspect of reality (the fact that wine is partially made of water) and gave it salience

(by exhibiting it on the label), thus avoiding a negative point of view on the matter (the wine as a beverage prohibited by the Coran). This echoes Entman's (1993, p. 52) definition of framing, because it involves selection and salience in promoting a peculiar definition of a problem to convince someone.

The argument is as follows. The institutional position A leads the actor to defend the institutional idea X, because this institution X distributes resources that respond to interests that are inherent to the institutional position A. The idea of an institution X is necessarily defended using certain frames. The frames may make explicit or hide the interests associated to institutional position A. We can expect that if the idea of X answers too clearly to an actor's self-interests, this actor will search for frames that hide interests associated to institutional position A. However, if the idea of X doesn't make immediately clear these interests, he may use frames that show them.

Frames have multiple uses for actors. They are a way of generating political support to specific ideas (Béland 2005, p. 11), of legitimizing unpopular political institutions or policies (Vis and Kersbergen 2007, p. 166; Taylor 2008, p. 120-123), of justifying armed conflicts as part of a peaceful general strategy (Isaacson 2005, p. 159), and many other examples<sup>11</sup>. In a broader sense, framing ideas can help certain actors to "limit the agenda of possible policy choices" (Tuchman 1978, cited by Pan and Kosicki 1993, p. 55) and advance strategies.

This essay does not intend towards a complete review of the literature on frames. I am more interested in two aspects well illustrated by Riker (1986). The first is related directly to the discussion of interests and the second exposes some recurring frames in political discourse that advance our empirical discussion on the frames used to defend the idea of a Mandatory Budget in Brazil.

In the case *Lincoln at Freeport*, Riker (1986, p. 1-9) describes how, in 1858, Abraham Lincoln debated democratic Senator Stephen Douglas during the campaign for State Senator in Illinois. At the time, the main political cleavages were organized around commercial expansionism (Federalists, Whigs and Republicans) and agrarian expansionism (Democrats). Seven decades before Lincoln faced Douglas, an agreement struck during the Constituent Convention in Philadelphia made slavery an issue to be treated only at the State level. Stephen Douglas was an advocate of this constitutional

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<sup>11</sup> It is virtually impossible, according to Lieberman (2002, p. 698) and Wagner (2007, p. 3), to find a political topic that is not multidimensional. When a political subject has multiple dimensions, an actor may clearly exploit only one and ignore the others.

decision. With this in mind, Lincoln asked Douglas: “Can the people of a United States Territory, in any lawful way, against the wish of any citizen of the United States, exclude slavery from its limits prior to the formation of a state constitution?”. His goal was to force Douglas to put himself in a difficult position, so Lincoln could either win the Senate State election or the Presidential election in the long run. What Lincoln does is framing. He gave salience to aspect X (federal or state jurisdiction) of the subject Y (slavery), when aspect K (civil rights) could also have been used. Lincoln chose to frame aspect X because it would serve both his short term and long term interests<sup>12</sup>.

In the case *Gouverneur Morris in the Philadelphia Convention*, Riker (1986, p. 34-51) describes the invention of the US electoral college and the opposition’s tactics to beat this institutional idea. The first frame used by governor Morris, based on Montesquieu, invoked the Legislative as a collective actor (Schickler 2001). Congress should not elect the Executive because that would hurt the separation of powers doctrine and consequently diminish the role of the Legislative branch as a collective actor. If Madison was persuaded by this argument, something not as sophisticated convinced politicians of a lesser intellectual stature. Morris used another argument associating the Executive’s election by Congress to corruption and political intrigue. This led supporters of parliamentary regimes to, at last, endorse the electoral college proposal. This case shows how frames can appeal to both short (bad functioning of the political system because of corruption) and long term interests (Legislative as a collective actor).

In the case of the Mandatory Budget, as we’ll see later, congressmen use frames related to long term interests as a rhetorical strategy to obscure short term interests. A possible explanation for this is that long term interests – e.g., the defense of the Legislative as a collective actor – seem more legitimate and less selfish than others.

#### **IV) *contingent consenters* and budgeting institutions**

If the relation between ideas and interests spelled out just now helps us think about the *content* of institutional change, it is important to take a step back and think about the *processes* and *actors* responsible for attempts, successful or not, of change. The plain distinction between political winners and losers has received strong criticism

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<sup>12</sup> If Douglas were to answer “no”, that would help Lincoln’s chances getting elected for the state Senate; if Douglas were to answer “yes”, Lincoln would have more chances to win the presidency afterwards. The second scenario happened.

recently (Mahoney and Thelen 2009, p. 28). This section considers how the current authoritative budget affects Brazilian Congressmen in terms of resources and what would be the plausible effects for three types of mandatory budget.

The main point is that congressmen have a “contingent consent” (Levi 1999) type of relationship with the Authoritative Budget in Brazil as this institution is normally used by the Executive. This means they have strong incentives to support this institution as long as it produces certain effects: the execution of individual amendments to the budget and, consequently, an increase in their chances of being reelected or remain politically active<sup>13</sup>. The less the Authoritative Budget is a viable way of executing individual budget amendments, the less incentives congressmen (both from the coalition and the opposition) will have to support this institution.

According to Pontes Lima (2003, p. 8-9), there are three possible models of Mandatory Budget institutions and I add a fourth. With a *Full Mandatory Budget* (henceforth Full MB), the government would be obliged to fully execute the budget programming defined by Congress. If the President doesn't have the fiscal means to do so, he would incur in debt to execute the budget. With an *Intermediate Mandatory Budget* (henceforth Intermediate MB), the government may choose not to execute certain expenses due to lack of resources, provided it obtained explicit approval from Congress<sup>14</sup>. Finally, there is the *Flexible Mandatory Budget* (henceforth Flexible MB), in which the government would not execute certain expenses for lack of revenue, communicating this to Congress, but without needing its explicit authorization. The Brazilian political system invented a new model, which does not fall in one of the three types described above: the Mandatory Budget for Congressmen's Amendments (henceforth *Pork-Only MB*). In this case, the Executive would be forced to execute all individual and collective budget amendments.

If institutions distribute power and political resources for the actors (Knight 1992), how does this occur in the Brazilian budget process? Currently, the Authoritative Budget provides a *distributive advantage* to members of the Executive-led coalition,

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<sup>13</sup> The notion that having individual budget amendments executed is one of the most important factors for being reelected (or otherwise continuing the political career at the state level) is very much embedded both in the literature (Pereira and Rennó, 2003), and among politicians (Carvalho, 2003, p. 154-155). Mesquita (2009) criticizes this view, not finding a direct relation between deputies' reelection and amendment execution. However, I agree with Mahoney (2005, p. 318) that actors may have unreal expectations regarding the functioning of a certain institution, but their inaccurate assessment will nonetheless inform a rational decision-making process regarding this institution.

<sup>14</sup> It is similar to the United States' rescission mechanism.

because it allows them to get more individual budget amendments executed than the ones proposed by the opposition (Figueiredo and Limongi 2008, p. 104).

Also, the Authoritative Budget, according to part of the literature, provides a *strategic advantage* for the Executive, who can time budget execution in order to attract more support from the floor for its bills and constitutional amendments (Alston and Mueller 2005; Pereira, Power and Raile 2009)<sup>15</sup>. It is undeniable that the Executive retains financial resources to direct the budget according to its own convenience (Piscitelli 2006, p. 3), just as congressmen have less reason to be bothered with this freedom enjoyed by the Executive the more their amendments gets executed.

How would the different Mandatory Budget proposals affect this political equilibrium? The Full MB would lead to three plausible effects: a) it would strengthen the Legislative as a collective actor, because it would make it solely responsible for a big part of the country's macroeconomic policies; b) it would eliminate the distributive advantage of the coalition in executing its own amendments; c) it would eliminate the strategic advantage of the Executive in timing the execution of the amendments. The Executive and members of the coalition are naturally opposed to certain types of Mandatory Budget. However, the four kinds of Mandatory Budget are unequal in relation to these effects, as table 1 shows.

**Table 1: Budgeting institutional ideas and political actors in Brazil**

	<b>Authoritative Budget</b>	<b>Full MB</b>	<b>Pork-only MB</b>	<b>Intermediate MB</b>	<b>Flexible MB</b>
Macroeconomic accountability	Executive	Legislative	Executive	Legislative	Executive
Distributive advantage	Large (Members of the coalition)	---	---	Small (Members of the coalition)	---
Strategic advantage	Large (Executive)	Legislative	Partial (Legislative)	Small (Executive)	Large (Executive)
Actor likely to defend the proposal	Executive, Congressmen, coalition	Congressmen, coalition and mostly the opposition	Congressmen, coalition and mostly the opposition	Congressmen, coalition and opposition	Executive

It is important to make a disclaimer regarding freedom of budget execution in Brazil. What part of the federal budget would be affected by the Mandatory Budget system? A great deal of the budget's execution is already mandatory, due to constitutional and other types of tie-ins<sup>16</sup>. The non-mandatory part that would be

<sup>15</sup> This argument is contested by Figueiredo and Limongi (2008).

<sup>16</sup> For example, expenses with federal public employees, social security, transfers to State and Municipality, interest payment, public debt, Organic Law of Social Assistance (LOAS), transfers due to

affected by the mandatory budget is comprised of new policies; the expansion of existing policies; and investments. Even in light of the claim that a Mandatory Budget (even a Full MB) would not strengthen the Legislative as a collective actor so much, considering that even the Executive has little capacity to interfere in the Budget (Pontes Lima 2003, p. 8), the new institution would still transfer significant amount of power resources to the Congressmen. There is a piece Y of the budget in dispute and a piece X that is not presumed as being in dispute by the actors. A Full MB would transfer that Y piece of the budget to the direct control of the Legislative and not the Executive.

As for the effects of Pork-Only MB, congressmen of the opposition would benefit, because the distributive advantage of the coalition - strategically benefited by the Executive when the budget is executed - would vanish. An Intermediate MB would require the Executive to seek Congress' approval if it wanted to suspend the execution of pieces of the budget. That would benefit the coalition, who could mobilize to see their amendments preserved, while the opposition's would probably not be as executed.

Among the options mentioned, Intermediate MB is a second-best alternative for congressmen of the opposition. The Flexible MB would only add a formal communication of the Executive to the Legislative regarding cancelations and transfers made by the Executive. It is almost another kind of Authoritative Budget<sup>17</sup>. Table 2 shows bills related to institutional budget alternatives analyzed either by the Brazilian Chamber of Deputies or the Senate.

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the Kandir law, SUS and subsidies. Kupfer (2006), and Marques and Mendes (2005) present a positive view over some of these choices, while Velloso (2006) and Nóbrega (2005) are tough critics.

<sup>17</sup> I do not contemplate here another institutional alternative - the creation of an interministerial committee to coordinate budget execution Barbosa (2006, p. 146) - because this idea has not yet been formally proposed in a bill.

**Table 2: Mandatory Budget Bills being discussed in the Brazilian Congress<sup>18</sup>**

Bill	Proponent	Model	Expected proponent	Actual proponent
PEC 2/2000	José Alencar	Pork-only	Mainly opposition	Opposition
PEC 481/2001	Wellington Dias	Pork-only	Mainly opposition	Opposition
PLP 205/2004	Laura Carneiro	Pork-only	Mainly opposition	Opposition
PLP 195/2004	Bernardo Ariston	Pork-only	Mainly opposition	Coalition
PEC 385/2005	Marcondes Gadelha	Pork-only	Mainly opposition	Coalition
PEC 46/2007	Flaviano Melo	Pork-only	Mainly opposition	Coalition
PEC 96/2007	Wandenkolk Gonçalves	Pork-only	Mainly opposition	Opposition
PEC 321/2009	Jair Bolsonaro	Pork-only	Mainly opposition	Coalition
PEC 77/1999	Iris Rezende	Full MB	Mainly opposition	Coalition
PEC 281/2008	Luiz Carlos Haully	Full MB	Mainly opposition	Opposition
PEC 28/2000	Pedro Simon	Intermediate MB	Coalition/Opposition	Coalition
PEC 22/2000	Antônio Carlos Magalhães	Intermediate MB	Coalition/Opposition	Coalition
PEC 169/2003	Jaime Martins	Intermediate MB	Coalition/Opposition	Coalition
PLP 87/2003	Reginaldo Germando	Intermediate MB connected to the Joint Budget Comitee	Coalition/Opposition	Opposition
PLP 218/2004	Yeda Crusius	Intermediate MB connected to the Joint Budget Comitee	Member of the Joint Budget Comitee	Opposition and ex-sectoral rapporteur of the Joint Budget Committee
PL 4786/2005	Bismarck Maia	Pork-only (exclusively for Transportation policy area)	Sectorial rapporteurs of the Transportation policy area in the Joint Budget Committee	Opposition and ex-sectoral rapporteur of the Joint Budget Committee

Sources: Chamber of Deputies and Senate. PEC is a constitutional amendment bill; PLP is a complementary law proposal; PL is a regular bill. For the actor's position in or out of the coalition, see Figueiredo (2007, p. 190).

Only two Full MB bills were proposed, one by a coalition senator, the other by a member of the Chamber of Deputies. Eight proposals of Pork-only MB circulated on both Houses of Congress.

Three Intermediate MB bills were proposed, all by members of the opposition. One of them, by Reginaldo Germando, stipulated mandatory spending only to the first half of the Annual Budget Law. Yeda Crusius, from the PSDB, proposed that the Joint Budget Committee (JBC) should define the revenues that should be mandatorily spent by the Executive, which could only be crossed out through legislative authorization – thus, an Intermediate MB connected to the JBC. Yeda had been sectoral rapporteur for the Education, Culture, Sports, Science and Technology on the JBC in 1996. Bismarck

<sup>18</sup> I withdrew from the table the PEC 562/2006, from the Chamber of Deputies, because it is a continuation of the PEC 22/2000 approved by the Senate. More on this below.

Maia, also of the PSDB, proposed a Intermediate MB specific for the Transportation policy area. Maia was the sectoral rapporteur of the health area in the JBC in 2004, something that has nothing to do with his proposal, but indicates this congressmen's interest in budgeting issues.

Finally, three orthodox proposals of Intermediate MB were suggested by members of the coalition, two in 2000 and one in 2003. It is worth mentioning the Constitutional Amendment Bill (PEC 22/2000) from Senator Antônio Carlos Magalhães, notorious leader of the PFL from the state of Bahia. This is the Mandatory Budget bill that has gone farthest in the Legislative. It was approved in the Senate and rejected by the Chamber of Deputies as PEC 565/2006. (Section V of this essay discusses it thoroughly.)

Table 2 shows that the congressmen from the coalition and from the opposition are equally responsible for proposing budgeting institutional change. This mixed result is hard to understand in a strict “winners and losers” framework: only congressmen from the opposition should, according to that argument, propose the end of the Authoritative Budget. But there are some reasons why a coalition deputy could suggest a Mandatory Budget bill: a) to strengthen the Legislative as a collective actor (Schickler, 2001) and win support of his peers; b) because, considering the execution of his amendments, he would rather win  $X$  than risk a gamble between  $X + 10$  or  $X - 10$ <sup>19</sup>; c) because he is trying to blackmail the Executive into bargaining around other proposals or even get more of his amendments executed (Tollini 2009, p. 25); d) because he wants to assert his independence from the Executive at the end of his mandate to, maybe, run for president or other offices.

However, the most persuasive theoretical argument is that pro-government congressmen are “conditional winners” under Authoritative Budget, while opposition congressmen are “conditional losers”. Mahoney and Thelen (2009) make an important contribution by saying that the division between winners and losers in a certain institutional framework is related to the actor's compliance to this specific institutional framework. In other words, different actors have different incentives to agree or disagree to a certain institutional design. The actor's disposition changes not only according to his institutional position, but also according to other power relations.

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<sup>19</sup> This point is made by the risk aversion literature (see brief explanation in Elster 2007, p. 200-202) and might deserve further research.

An actor of the legislative opposition may have strong incentives to comply with Authoritative Budget institutions if the Executive usually executes the budget amendments proposed by him. In other words, this actor's level of compliance changes according to the execution of his amendments – or, at least, according to the way he perceives his amendments are being treated by the Executive. In the same manner, the congressmen who belong to the coalition are “winners” under the Authoritative Budget provided the Executive actually executes their amendments or other projects of interest. Under a Mandatory Budget, the coalition congressmen would be unconditional “winners”, but they would gain just as much as congressmen from the opposition.

This analysis strongly echoes the concept of “contingent consent” (Levi 1999). Her research considers whether citizens comply with certain acts of government by asking if they find the government trustworthy and if they are satisfied with the general consent of other citizens over these same acts. Contingent consent, therefore, is related to compliance with certain rules (e.g., a budget institution) provided that other actors (e.g., the Executive and other congressmen) also respect them.

Changing institutions requires effort, time, political influence and unusual capacity for persuasion. It often begs for a relatively strong entrepreneur. The next section discusses how senator Antônio Carlos Magalhães was the main entrepreneur of Mandatory Budget in the last twenty years in Brazil, and how that idea, in spite of great mobilization and support by most of the senators, got blocked by the Executive's effective agenda control in the Chamber of Deputies.

## **V) Institutions vs. Entrepreneurs: senator Magalhaes' partial success**

This section first considers how Mandatory Budget proposals started circulating in the Brazilian public agenda; then it analyzes how the Executive sought to control Brazil's legislative agenda; and, finally, how the entrepreneur Antônio Carlos Magalhães, a conservative senator, had relative success in bypassing part of the Executive's institutional control and advanced his proposal of a Mandatory Budget.

The circulation of institutional ideas – especially heterodox ideas that offer alternative distribution of resources – is usually favored by corruption scandals and other critical junctures or policy windows (Katznelson 2003). Initially, the case of Mandatory Budget seems to be typical of this dynamic. The scarce literature on budgeting institutions in Brazil points the origin of the circulation of proposals for

Mandatory Budget both at scandals related to budget corruption (Figueiredo and Limongi 2008, p. 18) and to Executive actions that are perceived as arbitrary or atypical in a “healthy” budget process (Pontes Lima 2003, p. 11).

However, both perspectives are incomplete. The first Congressional Committee of Inquiry that investigated budget corruption, between 1993 and 1994, did not include among its 23 suggestions of institutional reform the idea of a Mandatory Budget. Although it vaguely stated that the “elaboration of budget bills” should occur “simultaneously in both the Executive and the Legislative”, the main goal of the committee was to rid the budget elaboration process from a corrupt cartel that had gotten hold of it, without much consideration for other institutional consequences.

Since 1999, sixteen proposals of Mandatory Budget have circulated both in the Chamber of Deputies and the Senate. A formal letter from deputy Paulo Bernardo sent in March 2005, when he was Chairman of the Joint Budget Committee, addressed several subjects related to budget reform, such as “budget execution and Mandatory Budget”<sup>20</sup>. Bernardo had diagnosed the “distancing of the *budget execution* from the legislative authorization expressed in the budget law, given that the approved budget is only Authoritative”. He proposed, among other things, to establish in the Law of Budget Directives<sup>21</sup> (LBD) “criteria and methods that reduce the discretionary power of the Executive” and to obligate the execution of discretionary expenses approved, provided the nominal fiscal goal foreseen in the LBD was met – in other words, a Mandatory Budget that would depend on a certain fiscal equilibrium to be previously defined by Congress in the LBD.

After this letter, an official Joint Committee was charged with organizing meetings between members of the Executive and members of Congress on several items of the budget reform. The Mandatory Budget was discussed mostly in the manner which I call “Pork-only MB” – a proposal that would make mandatory the execution of budget amendments proposed by the Congressmen, without further consideration of the rest of the budget<sup>22</sup>. If we consider congressmen as contingent consenters of the Authoritative Budget, as noted in this essay’s previous section, their effort in elaborating some sort of Mandatory Budget is predictable under certain circumstances.

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<sup>20</sup> I thank Carlos Marshall, budget consultant at the Senado Federal, for allowing access to this document.

<sup>21</sup> “Lei de Diretrizes Orçamentárias” in Portuguese. This is the first budget draft sent to Congress by the Executive until June 30 every year. After that, the congressmen analyze and amend part of the budget.

<sup>22</sup> I thank employees from the Joint Budget Committee for allowing me access to the minutes of the meetings of 2005 from this committee on budget reform.

In its purest form, a Mandatory Budget bill is a constitutional amendment that requires the support of 60% of the members of both federal Legislative Houses in Brazil, in two rounds of vote on the floor of the Câmara dos Deputados and the Senado Federal. The only political actor that has enough resources to mobilize that many congressmen around a proposal of constitutional amendment is the Executive. Since a MB proposal doesn't interest the Executive, who could propose it? Only an entrepreneur with a lot of political muscle. In the case of Mandatory Budget in Brazil, senator Antônio Carlos Magalhães (PFL-BA) was this entrepreneur. But even he would face considerable obstacles.

After the 1988 Constitution, the Brazilian political system has been described as full of difficulties for the president to pass his agenda through Congress (Ames 2002, p. 213), but also as having a “consistent pattern of government versus opposition, with reasonable discipline among the various partners of the government and a highly disciplined opposition” (Santos 2002, p. 257-258). The 1988 Constitution establishes that the deliberative process is reserved for two Legislative chambers – the Chamber of Deputies and the Senate -, but the former has precedence as a deliberative body over the latter.

The Brazilian legislative process is organized around three fundamental *loci*. They are the permanent committees, the Steering Boards (*Mesa Diretora*, in Brazil's legislative jargon) of both Houses and the Leaders' Caucus<sup>23</sup>. All bills must go through the permanent committees of each House before reaching the floor. These committees are integrated by Congressmen distributed according to party proportionality and have specific areas of jurisdiction. The committees are run by their Chairmen, who select the rapporteurs of the bills and organize the deliberative process while the bill is in the committee stage.

The Steering Boards are the administrative bodies that run each House and direct a major part of the legislative process. The positions of the Boards (Chairman, Vice-Chairman and Secretaries) are distributed according to party proportionality. Usually the parties with bigger representation in the House appoint the Chairman of the Board. The Chairman holds a very important position because, not only he is in line to succeed the President, he is the one that runs the legislative process, chooses what bills will be analyzed and clarifies important procedural questions for the legislative process.

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<sup>23</sup> My translation for *Colégio de Líderes*.

Another important institution is the Leaders' Caucus, whose members are leaders of their parties. They can direct the members of their parties when voting in the committees or the floor. The leaders are elected by their respective parties and the President may choose a government leader.

The composition of the permanent committees depends on the representation of each party in the legislative houses. In Brazil, a country where multipartyism is the most obvious effect of proportional representation, it is virtually impossible for a single party to hold the absolute majority. The government cannot informally appoint the Chairman of all the committees; therefore, the Executive-led coalition must prioritize control over certain committees.

It is up to the Chairman of the committee to choose the rapporteurs for each bill. The rapporteur is a key figure of the deliberative process, because it is based on his report that the other congressmen in the committee will vote. The report may suggest that the bill should be approved as originally presented; it may offer amendments, altering the original bill; or it may present a substitutive bill. An unfriendly Chairman may choose as rapporteur a congressman who is against the government's proposal and resistance to a government bill could start even before it is put to a vote in the committee stage.

Say a bill is analyzed by a rapporteur favorable to the government and he doesn't suggest any changes to it. The report is voted in the committee. If approved, it goes to the floor. If the floor is the Chamber of Deputies', the bill gets sent to the Senate. If the project is rejected in the Senate, it is filed away. If the project is altered, it will come back to the Chamber of Deputies for appreciation of the changes made. If approved by the Senate, it will be sent to presidential sanction. If the Chamber of Deputies does not agree with the changes, the version that stands is the Chamber of Deputies', and the project goes to presidential sanction. Once sent to the President, he may sign it into law or veto it. The veto may be on the whole bill or just part of it. Congress can override the vetoes with a simple majority<sup>24</sup>.

These are the major obstacles that Magalhães would face to get his Intermediate MB bill approved. How did the senator managed to be relatively successful, passing his

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<sup>24</sup> This brief summary applies to regular bills. Other types of bills follow slightly different procedures.

proposal in the Senate, but getting shut down by the governmental coalition in the Justice and Constitution Committee<sup>25</sup> (JCC) in the Chamber of Deputies?

There are four clear difficulties for Magalhães. The first is the *nature* of the proposal. The fact that it is a constitutional amendment bill means that he would need to get the approval of a bigger majority than the one required for a regular bill<sup>26</sup>. The second has to do with the *content* of the proposal: the Executive, leader of the coalition, has strong incentives to be against the idea of Magalhães's Intermediate Mandatory Budget bill. The third is related to an institutional prerogative: a Senator cannot, alone, ask an urgency provision in the deliberation of a bill, so it can be processed faster<sup>27</sup>. Finally, there is a fourth difficulty also related to the *nature* of the proposal. Since it is an amendment bill, it has to pass both in the Chamber of Deputies and in the Senate, and the Chamber of Deputies cannot bypass the Senate's changes in the case of a constitutional amendment bill. Magalhães had very little personal influence in the Chamber of Deputies, although he was a respected leader in the Senate.

However, the Senator had at least four advantages when compared to other congressmen that proposed some kind of Mandatory Budget. He was an influential actor and relatively independent from the Executive<sup>28</sup>; from 2005 to 2006, he was Chairman of the Senate's Justice and Constitution Committee (henceforth JCC/S), having the prerogative of appointing the Senator that would be the rapporteur of his constitutional amendment bill in this committee, the most important one in the Senate. Magalhães's party, the PFL, was very strong in the JCC/S, which meant that the rapporteur's report would have strong chances of passing. Also, the senator's bill suggested an Intermediate MB (and not a Full MB, something that would certainly alienate the majority of congressmen that belonged to the governmental coalition).

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<sup>25</sup> This committee can be roughly compared to the US Senate's Judiciary Committee. But the JCCs have a special function in Brazilian Legislative procedure. There are two JCCs, one for the Senate and one for the Chamber of Deputies. A lot of bills that go through either House must pass the JCCs before going to another committee or getting to the floor, except when the Executive requires an "urgency provision". The JCCs are supposed to exercise a pre-judicial review of every law or constitutional amendment proposed in the legislative before it gets approved. In practice, the JCCs are highly influenced by political bargains with the Executive and are used to advance salient bills and filibuster the rest.

<sup>26</sup> Souza (2008, p. 810) argues that congressmen work together with members of the Executive on some constitutional amendment bills, showing a more complex relation than is usually assumed.

<sup>27</sup> The urgency provision request is commonly used by the Executive to speed up the processing of bills that interest it. In the case of bills proposed by Senators, the request for urgency requires the support of at least 25% of the members of the House or the party leaders that represent that amount. See articles 336 through 344 of the Senate's standing orders.

<sup>28</sup> Magalhães proposed at least one other constitutional amendment bill that annoyed the Executive during the beginning of the twenty-first century (Souza 2008, p. 811-812).

Why would Magalhães propose a bill contrary to so many interests? He was not a politician who showed a great deal of interest in budgeting issues (Dantas Neto 2006), although the fact that he was from the Northeast of Brazil may have encouraged him to rearrange budgeting institutions, “unfair” to the country’s poorest states, according to a former budgeting consultant of the Senate<sup>29</sup>. It is plausible that the proposal had the intention of denouncing the bad macroeconomic performance at the end of the Fernando Henrique Cardoso’s (1995-2002) administration. Another possibility is that Magalhães acted strategically, proposing something which he knew would be impossible to approve, but using this to bargain around other bills of his interest (Diniz 2005) or even an attenuated version of Mandatory Budget, less aggressive to the executive.

There isn’t evidence to support these hypotheses. There are two most probable answers to this puzzle. The first is that Magalhães wanted to influence the Presidential election in 2002 or even be a candidate himself. The second answer, most probable, is that Magalhães was working under the assumption that the leftist *Partido dos Trabalhadores*’s (Worker’s Party) would win, and sought to create institutions that would make a leftist president less powerful. His constitutional amendment bill contains a strong indicator of this, as we shall see.

What was in Magalhães’ Intermediate MB bill? The PEC 22/2000 had six main points: 1) it proposed an end to the legislative year only after the deliberation of the annual budget law; 2) it prohibited generic programming in the budget laws – the so-called “umbrella” projects; 3) it proposed that new programming in the budget could only be made after adequate resources to the ones already been executed were adequately provided for; 4) it made mandatory the execution of the budget law; in case the President were to disobey, he could be charged with a “crime of responsibility”; 5) it vetoed the so called “conditional revenues” in the budget laws; 6) it altered the deadlines for Congress to appreciate the Annual Budget Law, the Law of Budget Directives and the Multiannual Plan.

The fourth point is, without a doubt, the most important one in the bill and would profoundly change the budget process in Brazil. If the President were to ask for a cancelation or a stay of execution of any budget project, his request would have to go through Congress under urgency provision. If Congress did not deliberate over this

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<sup>29</sup> Interview with Robison Castro, May 19 2008. Castro was one of Magalhães’ advisers in the drafting of the PEC 22/2000. This federal dimension of the budget was not considered by Magalhães in the bill. For a scholarly perspective of this issue, see Souza (2003).

request in 30 days, it would be considered approved. This means that it would be up to the congressmen to coordinate and try to defeat the cancelations of the Executive, which indicated that the status quo would not be so unfavorable to the president as one would imagine.

It is extremely important to note that Magalhães included that the institutional change would only begin to function “in the first day of the second year subsequent to the amendment’s approval”. Since the senator proposed the bill in 2000, it is reasonable to assume that he expected the approval, optimistically, in 2001. Well, the second year after 2001 is 2003, under a new government. It is the opposite of a “sunset provision” (Sinclair 2007, p. 94) – a mechanism in the US legislative process that makes a law expire after a pre-determined period of time – and it is also a strong indicator that Magalhães proposed the Intermediate MB bill with the intent of harming the leftist president eventually elected in 2002.

Kingdon (1995, p. 181) notices that tenacity pays off for an entrepreneur. On hold at the Senate for five years, the PEC 22/2000 started to become relevant when the senator became Chairman of the Justice and Constitution Committee of the Senate (JCC/SF) in 2005. At the time, Magalhães was already a leader of the opposition to president Luiz Inácio Lula da Silva of the PT. Considering that legislative coalitions led by the Executive tend to “allocate to their own members a controlling share of the official posts to which substantial agenda-setting powers are attached (ministers, committee chairs, speakers, conferees)”<sup>30</sup>, it seemed strange that Magalhães got this position. Mostly because the JCC/S is one of the most important and disputed committees in the Brazilian Legislative committee structure, and a lot of senators with consolidated careers seek to participate in it (Lemos and Ranincheski 2008, p. 88 and 114).

Something besides Magalhães’ personal influence that helped him rise to the JCC/S was his party’s control over the committee in the 1990s (Lemos and Ranincheski 2008, p. 108). As Chairman of the committee, he could take on two typical tasks of an entrepreneur: mobilize support of other strong political actors around his proposal (unsuccessfully) and appoint the rapporteur that would guarantee a friendly report to his bill (successfully).

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<sup>30</sup> According to Amorim Neto, Cox and McCubbins (2003, p. 551).

Magalhães' first task was to convince some of his closest allies to defend his bill on the floor, way before it was put to vote<sup>31</sup>. Aloizio Mercadante (PT), government whip in the Senate had the opposite task, and he suggested public hearings with Governors and Mayors to avoid getting the bill approved. This was pretty risky, since although Brazilian governors had their status diminished from “*barões da Federação*” (Abrucio, 1988), being less influential in the decisions made by congressmen (Arretche 2007; Cheibub, Figueiredo and Limongi 2009), the support of these actors would certainly not hurt Magalhães. The definition of the request for the hearings was only obtained after disagreements between Mercadante and Antonio Carlos Magalhães<sup>32</sup>. Magalhães was unlucky: one of the governors sent a report explicitly criticizing the proposal, and one of the mayors thought it was “uncalled for”.

The appointment of the rapporteur was the senator's trump card in approving the bill. Committee's rapporteurs are powerful in the Brazilian political system. According to Santos and Almeida (2005, p. 699-700), “the rapporteur is in charge of offering his judgment about the bill, suggesting its rejection or approval, incorporating, at his discretion, possible amendments presented by the other committee members. The Chairman gets to choose the rapporteur, and there is no restriction to which member of the committee he might be or how many times the same person may fill that position for different bills”.

Rapporteurs often work as specialists that brief the floor (Santos and Almeida, 2005, following Krehbiel's 1991 argument for the US House of Representatives), but are the committees themselves formed by specialists? The more specialized the committees are, the less susceptible they would be to such personal pressure as Magalhães'. According to Lemos and Ranincheski (2008), the Senate's CCJ is less specialized than the Chamber of Deputies' CCJ. Therefore, it is only possible to truly

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<sup>31</sup> Twelve deputies defended, from 2000 to 2005, some type of Mandatory Budget in the floor. Six of them were from Magalhães' party and five mentioned the Senator's proposal, asking that it be immediately put to vote. With the exception of one Congressman, all the others belonged to parties opposed to the government. One may infer that Magalhães' bill found more acceptance inside his inner circle or allies, with few support elsewhere, creating a diversified political group capable of passing the Bill in the floor against the Executive's will. See Congressman Confúcio Moura' speech (5/12/2003), Luiz Carreira (22/1/2004), Corauci Sobrinho (22/1/2004), Antônio Carlos Magalhães Neto (22/1/2004), Cláudio Cajado (2/3/2004), Walter Pinheiro (28/12/2004), Alceu Colares (17/2/2005), Costa Ferreira (15/6/2005), Ivan Ranzolin (15/6/2005), Agnaldo Muniz (15/6/2005) e Lincoln Portela (15/6/2005) in [www.camara.gov.br](http://www.camara.gov.br).

<sup>32</sup> “PT evita votação do Orçamento impositivo”, *Valor Econômico*, 24/03/2005, p. A8

influence it by being Chairman of the committee, which Magalhães finally became in 2005, after a bargain struck between the PMDB and the PFL in 2003<sup>33</sup>.

César Borges, from the same party as Magalhães, was the rapporteur for the PEC 22/2000. Borges has been described by the media as being sponsored and “oriented”<sup>34</sup> by Magalhães (in portuguese slang, he was an “afilhado”<sup>35</sup>, “apadrinhado”<sup>36</sup>, “aliado”<sup>37</sup>). His work as rapporteur prevented the government, through Senator Aloizio Mercadante, from radically changing the mandatory budget PEC. Mercadante proposed four amendments<sup>38</sup> to the bill – one of which could have been considered a “killer amendment”, defined by Finocchiaro and Jenkins (2008, p. 263) as “an amendment which, when added to a bill that previously had majority support, causes it to fail”.

Mercadante’s attempt of a “killer” amendment proposed the extinction of the Joint Budget Committee and, therefore, the decentralization of the budget process in the two houses of Congress. Justifying this amendment, Mercadante said that “...if the intention that inspired the PEC 22/2000 is the affirmation of Congress to dispose over budgeting issues, in a model similar to the United States”<sup>39</sup>, where the houses deliberate separately, with full attributions and prerrogatives over budgeting issues. That would not justify, in this context, the maintenance of the Joint Budget Committee”. This was a clear attempt to insert a killer amendment in the bill because the JBC is a typical congressional power base, distributing important resources to the congressmen – and parties – that control it. However, since the JBC is often associated to corruption scandals, it wasn’t difficult for rapporteur César Borges to defend the extinction of the committee appealing to anti-corruption rhetoric. That’s how Borges managed to annul Mercadante’s proposal, which linked the end of the JBC to the Mandatory Budget, so

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<sup>33</sup> “ACM se afasta temporariamente da presidência da CCJ”, *Correio da Bahia*, 18/2/2003.

<sup>34</sup> “PT evita votação do Orçamento impositivo”, *Valor Econômico*, 24/03/2005, p. A8.

<sup>35</sup> “ACM morre aos 79 anos em São Paulo”, *Diário de Natal*, 21/7/2007, p. 9.

<sup>36</sup> “ACM decide só sair da Bahia após decisão sobre a Ford”, *Folha de S. Paulo*, 08/07/1999.

<sup>37</sup> “Adversários e aliados se despedem de ACM”, [www.g1.globo.com](http://www.g1.globo.com), 21/07/2007, acessado em 10/7/2009.

<sup>38</sup> The first amendment proposed by Mercadante that the spending be specified in the State and not Municipal level, because otherwise that would make the “lawmaking job an herculean and irrational one of deliberating over 5.563 cities”. The second amendment proposed that the alterations to the budgeting process suggested by the PEC 22/2000 would also be made mandatory to the States and Municipalities. The third amendment proposed that the deadlines to the Mandatory Budget and other items in the PEC be defined in a complementary law, because they were “of great magnitude and and scale”. This amendment exemplified the struggle between coalition and opposition around the proposal, because it was about the reversed “sunset provision” included by the conservative Senator. It was the only amendment that rapporteur César Borges rejected by merit, explaining that the amendment was already contemplated in the PEC 22/2000.

<sup>39</sup> For an analysis of how United States’ Congress inspires legislative organizations in other countries, see Power and Rae (2006).

that sympathizers of one idea but not the other in the committee would reject, simultaneously, both proposals.

Borges' denial of Mercadante's "killer amendment" was, along with the first and second also proposed by Mercadante, included for voting in the Justice and Constitution Committee in May 2005, just a few months after Magalhães' assumed the Chairmanship of the JCC. They were approved in November 2005 with the support of 16 out of 23 Senators in the committee<sup>40</sup>. With the tacit consent of the Steering Board<sup>41</sup>, 56 out of 81 Senators approved the bill in the first round of vote on the Senate floor the same day it was approved in the Committee. In the beginning of 2006, Magalhães' bill was approved in the Senate floor, though a second round of voting, winning 55 votes, and was taken to the Chamber of Deputies.

### **Magalhães' failure in the Chamber of Deputies**

Just as the PEC 22/2000 arrived at the Chamber of Deputies, Magalhães saw his persuasion powers greatly diminished. Mahoney and Thelen (2009, p. 12) notice that a political actor that finds himself in disadvantage at a certain institutional setting (in this case, Magalhães at the Chamber of Deputies) may use his influence and *status* in another institution (in this case, the Federal Senate) to obtain the desired institutional change. The conservative senator couldn't determine the luck of his project on the Justice and Constitution Committee at the Chamber of Deputies, contrary to what he did in the Senate.

The Chamber's JCC is strategic to all parties because it usually determines the course of a bill (Müller 2005, p. 373). The parties trust their posts in the JCC to its most loyal members. Ribeiral (1998), cited by Ricci and Lemos (2004, p. 110), mentions that the Chamber's JCC is extremely active and favors internal specialization. Considering the importance of the JCC to the Chamber's legislative procedures, it doesn't strike as odd that the government's coalition has a majority in it and manages its work in order to achieve certain results, most of all through nominating rapporteurs and/or mobilizing a majority of deputies to vote against reports from opposition's rapporteurs.

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<sup>40</sup> 9 out of 18 from the PFL/PSDB coalition; 4 out of 14 from the government's PT/PSB/PL/PPS coalition; 2 out of 12 from the PMDB; 1 out of 2 from the PDT.

<sup>41</sup> I thank Simone Diniz for drawing my attention to this point.

It is worth remembering that this and other mechanisms were used by the Executive-led coalition to avoid the passage of Mandatory Budget bills both in the Chamber of Deputies and in the Senate. The coalition did not appoint the rapporteur for some bills, thus preventing it ever coming to a vote in the committee (bills 218/2004; 205/2004; 195/2004; 385/2005; 46/2007; 96/2007; 281/2008; 321/2009); the coalition appointed a rapporteur that proposed the rejection of some bills (bills 87/2003, 4786/2005); and the coalition appointed a rapporteur that did not present a report, thus preventing the bill from ever reaching a vote (bill 169/2003). In the case of these twelve bills, the Executive's power as leader of the coalition was discreet and successful.

A similar process happened with Magalhães' bill in the Chamber of Deputies. Deputy Paulo Maluf (PP-SP), despite being a member of the coalition, offered a positive report to Magalhães' bill in the JCC in April 2007<sup>42</sup>. This report was returned to Maluf on two occasions (May 2007 and July 2007) due to lack of quorum. The government-led coalition was mobilized in March 2008 to help defeat the bill, through deputies Antonio Carlos Biscaia, Colbert Martins and José Genoïno. They asked to review the report, thus delaying the voting for a week in the JCC.

The final decision on Magalhães' bill in the Chamber of Deputies was taken in April 2008. Deputies Paulo Magalhães (PFL), Felipe Maia (PFL) and Silvinho Peccioli (PFL) signed a separate vote, favorable to the mandatory budget bill with arguments complementary to those offered by rapporteur Maluf. José Eduardo Cardozo, from the executive-led PT, also presented a separate opinion to Maluf's report, arguing against Magalhães' bill. The opposition noticed that it would not have stamina to approve the bill and opted to withdraw it from the JCC.

That's the story of how the Executive-led coalition acted somewhat silently and forced Magalhães to abandon the idea of a Mandatory Budget in Brazil. In July 2007, the entrepreneur who had fought so much for the PEC 22/2000 died in São Paulo.

How is it possible to measure Magalhães' success? It is undeniable that, in spite of the rejection of his Mandatory Budget proposal, the senator obtained relative success. It was a bill highly contrary to the most powerful actor in the Brazilian political system, the Executive. He managed to take it to the Senate's floor – something that occurred

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<sup>42</sup> Maluf, a former mayor of São Paulo, is a notorious enemy of president Luis Inácio Lula da Silva. (See, for example, "Lula provoca Maluf ao falar do combate ao crime organizado", *Diário de S. Paulo*, 28/3/2003). Therefore, his characterization as being part of the government's coalition must be taken with a pinch of salt. Also, Maluf publicly criticized, at the time, the fact that the Executive issued executive decrees that altered the budget. See Justice and Constitution Committee, 2007.

with only 9% of the unapproved bills in the Senate from 1991 to 2003 (Ricci, 2008, p. 255) – and obtained a favorable report from the rapporteur in both the Chamber (Paulo Maluf) and the Senate’s (Cesar Borges) JCCs. Also indicative of Magalhães’ success is the fact that the bill did not get rejected in the Senate’s floor, something that happened with 83% of rejected senatorial bills from 1991 to 2003 (Ricci, 2008, p. 251)<sup>43</sup>. The Senate usually shoots down bills proposed by senators (Ricci, 2003, p. 723).

To sum up, it is fitting to recall three requirements that make a successful entrepreneur pointed out by Campbell (2004, p. 86): 1) capacity to fit his innovative proposition in the institutional context; 2) ability to mobilize political support around the proposition; 3) financial and administrative viability of the proposal<sup>44</sup>. Magalhães’ ability to mobilize support partially compensated the absolute lack of adequacy of his Intermediate MB bill to the Brazilian institutional context. The following section analyzes the frames used by the senator to defend his Mandatory Budget bill and how they reveal short and long term interests of the actors involved.

## **VI) Interests, ideas and frames for budgeting institutions**

Ideas and interests determine the content of institutional changes such as the one proposed by Magalhães. This final section analyzes how the advocate of a certain idea – in this case, an idea that is subversive and against the interests of powerful political actors – uses frames in a way as to convince more actors to defend it. For that, it is necessary to understand what were the main interests of Magalhães at the time he proposed his Mandatory Budget bill and how his short term and long term interests were connected to the interests of other actors. Magalhães strategically revealed (or hid) his interests in frames mobilized to formally defend PEC 22/2000.

The theoretical discussion that matters most here is that a single actor has several interests which are difficult to point out (Taylor 2008, p. 118; Mahoney and Thelen 2009, p. 28), as a previous section of this essay has discussed. I argue that through a careful analysis of the frames used by the actors, their interests in defending or attacking a certain idea becomes clear. Some interests may be publicly shown by the

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<sup>43</sup> The remaining 17% were rejected by the Chamber of Deputies.

<sup>44</sup> This matters a lot for policy changes and very little for institutional changes like the one studied in this essay.

actor; others, apparently selfish ones, may not. These “invisible” interests are usually short term ones, clearly connected to the reelection and other less altruistic goals.

The basic argument is that Magalhães defended a Mandatory Intermediary Budget for Brazil because this institutional idea is resonant with two of his main goals as a political actor: his interest as a leader of the opposition and his interest as an important parliamentary leader. (One must keep in mind that Magalhães was President of the Senate in 2000, when he proposed the PEC 22/2000). The idea of a Mandatory Budget shows medium and short term interests of the senator. This bill would implement new budgeting institutions *only two years after the passage of the bill*; this meant that Magalhães could be in a position of leader of the opposition in two years time. Being in the opposition when the Executive has the prerogative of authoritative budgeting significantly diminishes the bargaining power of an actor and, consequently, the volume of his executed amendments. Therefore, a Mandatory Budget would be excellent to satisfy this “selfish” interest of Magalhães as an opposition leader.

The second interest of Magalhães resonant to the idea of Mandatory Budget is a long term one, related to his importance as a legislative leader. In 2000, when he proposed PEC 22/2000, Magalhães was the President of the Senate. It is reasonable to imagine that the senator expected to continue to influence in the legislative works for some time. That way, he would strengthen his position the more important the Legislative became as a collective actor.

What frames might we expect to find in Magalhães’ discourse? The frames that would make explicit his long term interests (as a congressional leader) and hide his short term and more selfish ones (as a opposition leader). This could help gather the support of other political actors around the idea of Mandatory Budget.

This sort of behavior is not at all new. Adler (2002, p. 222) defends the necessity of using frames to defend institutional reforms “in such a way that the entrepreneur’s peers will think that the reforms will bring advantages to representation and reelection”. Discussing changes in electoral systems, Elster (1995) argues that small parties defend proportional representation systems as being “more democratic” and larger parties propose a majoritarian system because “it makes it easier to govern”. The parties do not admit that under each of their preferred systems their electoral chances increase.

Other institutions are also affected by frames. The Brazilian BAR association (OAB), for example, when criticized, hides behind the pillar of once having been “a popular movement in favor of the redemocratization of Brazil” and doesn’t show that it

is an interest group with clear corporate functions (Taylor 2008, p. 119-120). A closer example to the case studied in this essay is related to the design of budget institutions in the European Union. Enderlein and Linder (2006, p. 198-200) note that one of the proposals defended by the European Parliament for the reform of the budgeting process suggests the elimination of distinction between mandatory and non-mandatory spending. This idea may be defended through a frame that emphasizes short term interests (e.g., greater economic efficiency and less opportunity for political conflict) or attacked through a frame that emphasizes long term interests (e.g., the relation between the European Council and the European Parliament).

In the case of Mandatory Budget in Brazil, what frames may be used to mobilize support from the actors? Table 3 organizes this discussion.

**Table 3: Presumed Actors' Frames related to Mandatory Budget**

	Coalition	Opposition	Executive
1) With an Intermediate Mandatory Budget, "government will not be macro-economically effective; because it will have its hands tied when it needs to treat urgent economic crises" – "Efficiency" Frame.	X	-	X
2) With an IMB, "government will loose an important negotiating tool with the Legislative, by not being able to withhold spending" – "Political bargain" Frame.	X	-	X
3) With an IMB, "government will make useless or bad spending demanded by the Congressmen" – "Executive Representation Frame".	-	-	X
4) With an IMB, "Legislative will finally achieve what the Constitution expects and will share the prerogative of running the macroeconomic agenda with the Executive" – "Legislative as a collective actor" Frame.	X	X	-
5) With an IMB, "government will no longer withhold the execution of the amendments of the Legislature, the branch that truly represents society's needs" - "Representation of the Legislative" Frame.	X	X	-
6) With an IMB, "government will cease to blackmail and corrupt Congress through shady bargains, executing only the amendments in case the Congressmen vote with the Executive" – "Corruption" Frame.	-	X	-
7) With an IMB, "the brazilian political system will have budgeting institutions equal to that of the successful countries such as the US" - "Diffusion" Frame.	X	X	-
8) With an IMB, "Brazilian budgeting process will be less corrupt, since there will be less holes during the process to allow political or economical ill-intentioned actors" – "Corruption" Frame.	X	X	X

When formally justifying the PEC 22/2000, Magalhães used three frames that may be associated both to the coalition and to the opposition (frames 4, 5 and 7),

depending on the *de facto* relationship between the Congressmen and the Executive<sup>45</sup>, and two frames (frames 1 and 2) that could be used both by members of the coalition and the Executive.

However, there is a clear dominance of frames that emphasize the representative role of the congressmen and the Legislative as a “collective actor”. Of fourteen frames used by Magalhães when justifying his bill, eight of them considered these two issues. Two other frames were about the Executive “efficiency”; two were about “corruption”, one about “bargaining” and one utilized the “diffusion” argument, according to which the institutions of foreign countries should inspire institutional reform in Brazil<sup>46</sup> (see Weyland, 2009).

By writing that his proposal has the goal of inserting “principles and rules that fights Executive dictatorship in budgeting matters”; that we must not give to the “Executive bureaucrats arbitrary powers of who may and who may not be contemplated with revenues, in an obvious encroachment of the Legislative’s prerogatives”; that too much time is spent by party leaders in “never-ending negotiations to reconcile legitimate claims of the parties represented in Congress”; that there cannot be a “democratically intolerable encroachment of the legitimate attributions by one of the branches”; that “what we aim is to reestablish the balance between the branches”; that the budget “must reflect the aspirations of society instead of mirroring only the deliberations taken in the air-conditioned offices of the Ministries”; that the Executive’s prerogative of timing the spending makes “arbitrary what should only be discretionary”; that Congress “has always acted and always will act in benefit of the Brazilian people” and that this whole situation has worn out “the image of the Legislative before society”, Magalhães clearly acted as someone that aims to benefit the Legislative as a collective actor. This is very much in line with the senator’s long term interests.

The “corruption” frame was used by Magalhães twice, when he wrote that “my bill has the goal of healing the great budget corruption disease, by determining that, once initiated, the Execution of a project must have guaranteed resources in the

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<sup>45</sup> See the previous section on Brazilian congressmen as contingent consenters of budgeting institutions.

<sup>46</sup> Magalhães wrote: “To compare our proposal with international experience is always important. The United States' case closely resembles our own, once their system is a presidential one - as ours - and, equally, the United States is a Federation. In the US, whenever the President is unable to execute a programmed budget expense or, for other reasons, intends to forestall its execution, the President is obliged to submit this decision to the approval of one of the Legislative's Houses of Congress. Therefore, this is a mechanism perfectly suited to the democratic principles and the presidential system of government”.

following budgets, until its completion”, because the budget may become “susceptible to external influences, brought by interests that are not in line with the indispensable candor and the collective well-being”. This frame also has to do with Magalhães’ long term interests, because the Legislative as a whole would benefit by an image dissociated from corruption.

As for the “political bargain” frame, Magalhães uses it discreetly, noting that “budget execution has been used as an instrument of political bargain”. The Senator is more explicit when using the “Efficiency” frame twice, showing a discreet rhetorical approximation to certain Executive interests. He said that “it is understandable and acceptable that economic authorities prefer discretionary power to adjust budget programming to the available means to execute it” and, further, that “we have to recognize that a series of factors prevent the Executive from implementing this or that budget programming. A cycle of adverse conjuncture that frustrates the revenues expectations; the default of an entity or body of the Federation; the lack of consistent projects to apply the resources. These are situations to which we may add extreme cases – such as public calamities of great proportions; a declaration of war; response to an foreign armed aggression – that may compel the Executive to change budget programming. In these cases, the proposal predicts that the Executive will send Congress a formal request of cancellation or delay, total or partial, of a budget spending. In the request it must be made explicit the technical, financial, operational and judicial reasons of the impossibility of execution of the programming”.

What can these frames used by Magalhães reveal about his political strategy? In case the senator had used more frames resonant to the Executive’s interests, one could infer that his proposal of a Mandatory Budget was strategic and that he intended to bargain for other bills or advantages. That doesn’t seem to be the case, mostly because Magalhães stressed the frames connected to the Legislative as a collective actor. This shows another theoretical gain of analyzing frames: the unveiling of an actor’s strategic intentions. It is clear that congressmen frequently use frames related to long term interests as rhetorical strategy to obscure short term interests. Studying frames is important, then, to distinguish these two kind of interests and how they relate to concrete ideas.

There are three possible theoretical implications from this case study. The first concerns the identification of legislative agenda control by a political actor as a fundamental variable to understand the dynamics of institutional stability. The second

refers to the content of institutional change, showing how interests and ideas interact and are revealed by frames strategically used by actors. Last, there is a possible theoretical contribution in analyzing how the *heresthetics* of an entrepreneur – in this case, Senator Antonio Carlos Magalhães – interacts with the interests of other actors. In this sense, it may be an advance in understanding how “change-agents” (Mahoney and Thelen 2009) sometimes clash with institutional arrangements.

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