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# Budgetary Legal Rule Theory

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**Summary**

Faced with the theoretical shortcomings of the structural and functional models of the budgetary legal norm created until now by the doctrinators of Financial Law, the present paper intends to present a new conceptual construction for this normative species. To this end, two central theoretical bases were used, namely the theory of systems and the pragmatic theory of communication. Based on these theoretical assumptions, the weaknesses of the formal, material and *sui generis* theories of the budget legal norm were pointed out, in order to create a new concept based on a pragmatic communicative system: the budgetary legal rule as disjunctive-integrative communication of conditioned-linked effectiveness. Being an introductory sketch, the present theory stands before the academic community for criticism, refinement, and discussion.

**Key-words**: Budgetary legal rule; Theory system; Theory of pragmatic communication.

## 1. Introduction

Human communication is marked by its extreme density and complexity. As of its gradual evolution, the social systems were able to develop their respective structures in an increasingly autonomous and integrated fashion, supported by a basic operation, that is, the communication itself. For subjects to communicate, human rationality has developed in the sense of creating symbolic structures that mediate the operations of reference between the world and consciousness. It is important to mention, then, the complexity of communication from the emergence and incorporation of language to the establishment of communication, that is, its interaction.

The communicative phenomenon, however, does not have a single bias of manifestation. It goes beyond its merely communicative function and has a structuring function. It enables the creation of social structures of their own which, in their slow and gradual process of evolutionary differentiation, originate the spheres of social systems that exist today. This paper then takes the communication process as the basic operation identifying social systems, which makes it possible not only to perform an epistemological analysis from the perspective of the observer, but also to identify the basic characteristic of a given social system, as it allows the separation between the system and its environment, that is, between the system and its environment. The correlation between structure and its respective operation is raised, so that the systemic function occurs in a circular logic, in which element and structure have intrinsic, self-referential characteristics. Among several social systems, the following analysis focuses on the phenomenon of the system of law. The methodological principle used is given by the description of the communicative phenomenon as the operation of a specific system, the peculiar element of which becomes the normative communication. In this theoretical scenario, the attempt to improve some of the premises listed by Niklas Luhmann's Theory of Systems from the pragmatic dimension of language unfolds as a presupposition that this is the insuperable condition for the very existence of normative communication, as Tércio Sampaio Ferraz Júnior.

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However, when taking normative communication from the legal rule, it does not adopt an ontological but systemic position. This means that one does not seek to analyze the pragmatic effects of normative communication, a material essence for this communication, an intrinsic content or hierarchy in order to begin the process of scientific description of the law system itself. Prior to that, communication is seen as an operation, as a necessary condition for the system to perform selection, evolve, differentiate, reduce contingencies and reinforce its autopoiesis.

In this field of theoretical considerations, an extremely relevant problem arises for this law, the cause of innumerable disagreements, disputes and, essentially, of latent pretension of primacy: the nature and function of the budgetary legal rule. Among several doctrinal currents developed in the world, most theoreticians face this specific normative phenomenon of Financial Law in a way that, in our view, is mistaken. We use limited assumptions regarding the distinction between legal rule and other discourses and communicative processes that are based on imperative formulations. And this is largely due to the inexistence of an analytical study of the structure and function of the budgetary legal rule, linked to the processes of achieving the systemic operation characteristic of law, normative communication.

It is from this framework of ideas that this essay intends to demonstrate not only that the budgetary legal rule is a reliable representation of normative communication, but also that it constitutes as pragmatic communication, endowed with a real possibility of influence in the behavior of the agents that communicate their content, which qualifies it as imperative.

In order to justify the reasoning, one shall go through normative communication in three different linguistic levels: syntactic, semantic and pragmatic. For this, the paper uses a deductive method, starting from general theoretical premises to arrive at the reasoned consideration of what is the representation of the budgetary legal rule in a given legal system. Furthermore, the comparative method shall be used in two aspects: both with respect to the evolution of the idea about the legal nature of the budget rule in relation to different approaches, as well as of the own formation of budgetary legal rule in other legal systems, including the Brazilian system Brazilian.

## 2. Legal rule as communication: outlines of a pragmatic theory

To evaluate the legal rule from a communicative understanding, we must limit our object of study in the field of language, it is understood, more narrowly, as the study of the symbolic abstractivization of the world by human rationality, which allows us to approximate the nuances theorists of semiotics. Given this, communication is established from the symbolic concatenation of innumerable elements that, in their functional-structural bias, are inexorably ended up being read through the need for meaning formation. The formation of meaning, in turn, has the reducing effect of contingency and the multiple possibilities of association between the symbolic elements, being the basic fact for communication to be established. The sense then reveals the constitution of the reduction of the past and future in the present, which allows that the communication shall not only have self-reference, but also to exclude, to include, to select and to evolve. Without any sense, "society, any and all social system would simply cease to exist[1]". It is the presence of meaning that allows the second-order observer to verify that the relationship between the operation and the structure occurs in a self-organized[2], self-referential[3]and autopoietic[4] fashion. For us to open our analysis beyond the frame of systems theory, however, we must consider that the ultimate point of the communicative process is its pragmatic nature. In this, we deviate punctually from the communicative theory of Niklas Luhmann, who, as Kolja Moller puts it, never had the pretension to make a critique of law, let alone to normatively open his theory from an imperative approach[5].

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[1]LUHMANN, N. (2016a). *Sistemas sociais: esboço de uma teoria geral.*Petrópolis, Vozes, p. 490.

[2]Self-organization understood as "as the production of own structures, through specific operations" (LUHMANN, N. (2009). *Introdução à Teoria dos Sistemas*. Petrópolis, Vozes, p. 113).

[3]Understood as the self-reproduction of the operations having as input, for the formation of meaning, the previous structure of the system. The reference to the next step of reproduction of the communicative operation is the communication itself already installed, autopoietically, in the structure of the system.

[4]Autopoiesis presented as a previous limitation of the system that allows the reproduction of this system from its own operation, in the sense of self-reproduction, so that this limitation itself determines the later state of the system (LUHMANN, N. (2009). Introdução à Teoria dos Sistemas. Petrópolis, Vozes). This means that, before a social system, whose basic operation is communication, it is only possible to establish a communicative process based on the existence of a prior structure, in constant evolution, and that makes possible the formation of meaning autopoietically, and in consequence, interaction.

[5]MÖLLER, K. (2015). Crítica do direito e teoria dos sistemas. *Tempo social.* V. 27, N. 2, p. 129.

For Luhmann, in studying a system one would be faced with an indefinite and ever-coming interconnection of factual operations, and not with the interconnection of certain specific rules, which are related in a form and content. This means that, for him, what matters is that there is a distinction between the system and its environment from the identification of the basic operation of communication. He takes the point of departure from the perspective of the legal rule or a possible typology of values – which would lead to an ontological analysis of the legal phenomenon – encompassing his theorizing about how the system behaves in the face of the concept of autopoiesis[6].

But from Luhmann's own theory of social systems, it is clear that communication, as the basic operation of the system, can only exist if there is previously a structural coupling between language and consciousness. Without this, there is no communication. And the communication of the system of law is normative communication, whose distinctive feature is its way of constituting an interactive system that guides not only the next speech, the next operation with the intention to make sense, but effectively the action of the agents in an interactive situation.

It is in this angle of communicative theory that the need arises to surface the pragmatic approach from semiotics. Tércio Sampaio Ferraz Júnior, in a specific work on the pragmatics applied to legal-normative communication, warns that this form of analysis, besides bringing great theoretical risk and showing a certain audacity - because the very idea of "pragmatics" is still obscure - ends up unveiling the complexity of communicative action. In thinking about the idea of communication one cannot forget the very conception of what would be the dialogue established between agents, so that the conditions for establishing communicative channels should not focus exclusively on analyzes of the correlations between linguistic elements (syntax) of the linguistic elements with their extralinguistic referenced elements (semantics) and of the correlation between these elements the recipients of the communicative message, users and interpreters in the (pragmatic) communication process. The question is not the evaluation of mere addition and fitting of linguistic categorizations in these grammar-conceptual boxes, but how this analysis is consistent with the formation of a sense system whose operative base is communication, to enable dialogue and interaction. We do not want to perform an analysis that has as a meeting point the establishment of possible transcendental conditions for the existence of communication, as Habermas[7]. The point, then, is to know how to become the pragmatic understanding of normative communication from the idea of interaction, which requires a proper scenario to be visualized and understood, that is, the one composed by a relation between sender and receiver and that meta-complementary form, reaching the interaction between.

Normative dialogue is manifested across the entire chain of law sources. It is not possible to describe the system without finding this fundamental interrelation between the elements contained in the structure. This dialogue is composed from the design of a feedback system[8], which has as its specific basis the identification of an information center, which is connected to a receiving center and which, from the constitution of the interaction, starts to function as a retroactive system. It is possible to explain it under the rationale of a communication system based on autopoiesis, we must necessarily take into account three different levels of selection operationalized by the communication system itself: "a) selecting *information*; b) selecting the *communication act*; e c) the selection made in the *understanding act*(*or not to understand*) the information and the communication act"[9]. The *information*, for the parameters defined herein, shall only be understood for the parameters established here, can only be understood from the systemic self-reference, that is, information is only spoken from the moment something is added within the communication system itself, which gives continuity to the work of sense formation. This constitution of meaning is given previously by the structure, which has a selective function to evaluate what is information – and what accesses, therefore, in the process of communication -, and what escapes the system, to have the sense of a disturbance, a noise that does not fit into the web of communication. This selection of the system with support in the self-reference is only possible due to the existence of a singular binary code, which makes selectivity possible, and which in the case of law is expressed in the formula *legal/illegal*[10].

[6]LUHMANN, N. (2016). *O direito da sociedade*. São Paulo, Martins Fontes, p. 54-55.
[7]FERRAZ JR., T. S. (1974). *Teoria da Norma Jurídica*. Rio de Janeiro, Forense, p. 1-4.
[8]BERTALANFFY, L. (2015). Teoria Geral dos Sistemas: fundamentos, desenvolvimento e aplicações. Petrópolis, Vozes, p. 69.
[9]LUHMANN, N. (2009). *Introdução à Teoria dos Sistemas*. Petrópolis, Vozes, p. 297.
[10]LUHMANN, N. (2016). *O direito da sociedade*. São Paulo, Martins Fontes, p. 209.

The *communication act*, in turn, is the act of intentionally sharing the information within a given system, that is, the information is aggregated into the communicative chain in order that something is absorbed from the reference to the formation of meaning[11]. Sharing is precisely dividing in otherness, that is, it depends on the specific correlation between an issuing center and an information receiving center, which select how the novelty shall install itself in the communication taken the temporal parameter: there is a past structure that is updated in the present and which can be aggregated with an expectation, in turn contained in the future. The *understanding act*, in turn, results from the formation of meaning in the scope of the absorption of information by the structure, from a communicative operation that is based on self-reference. In producing meaning, communication is established, which can, from the pragmatic point of view, carry out an update of the interaction type, whose final product is the realization of a trustworthy feedback mechanism, whose manifestation in the legal system is pragmatic.

The communicating act and the understanding act can only be considered on the basis of a discourse that allows the second-order observer to identify a specific communicative situation. When communicating and transmitting information, the agent does not only want to add new references to the cognitive scope of the taxable person, but wants to establish a true dialogue if the trust is installed[12]. The aspect for effective communication is therefore dialogic. In the dialogue, we have sending/receiving centers that actively participate not only in selecting between adequate and inadequate information for the formation of the sense of communication, but also in the counter-argumentation in case of inadequacy, re-updating the meaning, which enables the formation of communication effective, autopoietic. The discourse is made possible by the comprehension, which is concretized, in a first moment, from the intellectual mechanisms of teaching and learning[13]. In this first point, the intention to establish communication is precisely to bring complexity to the dialogic structure through the continuous aggregation and selection of information. The second moment occurs on the other side of the coin, that is, the concretization of the selection that excludes something that was previously considered information, or an attempt to innovate in the system, and that has brought disappointment or mistrust to the formation of the sense of communication–*invalidity*. At this point, the teaching and learning of the communicational situation contributes to a negative sense; the boundary of the system with its environment. It is the phenomenon of understanding, therefore, that makes possible the formation of a communicative composition that is denominated communicative situation. And this situation is a clear retroaction mechanism, in which the communication presents itself not in a purely static sense, that allows to identify without difficulty what the active pole and the defendant pole. But at all times, the sender and receiver exchange places, and the actions of the receiving center itself influence the concatenation of the ideas exposed by the sender, a fact that enables a continuous exchange of information, tending to make sense. Thus, "a series of messages exchanged between speaker and listener is called interaction. Every communicative situation is, in these terms, an interactive system"[14].

These characteristics of the communication system allow us to consider the operation beyond its formal structure, approaching its effectively pragmatic aspect. There is no communication that does not touch the subjects participating in the process - except in the complete absence of cognition. To elevate any dialogical analysis to the merely formal level is to blunt the communicative phenomenon in its most powerful face, that is, that all communication influences the very action of the agents, or pragmatic.

### 2.1 The pragmatic normative and its logical operators

The study of the interaction between sender and receiver from the point of view of a feedback scheme leads us to consider how the message interferes in the action of the subjects. But this message does not in itself contain any degree of univocality, so that at any moment the poles of communication can initiate the production of mechanisms that test the information gradually added to the communication. The question and answer model, as well as a topic style[15], is discussed, in which the search for meaning necessarily crosses the attempt to effect a coherent and reflective argumentation. By establishing the standards of a communication that develops through interactive and reflexive reality, the communicative system enhances its internal complexity.

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[11]COSTA GONTIJO, P. A. (2018). *Os tratados internacionais comuns e a proteção da confiança*. Belo Horizonte: Biblioteca da Universidade Federal de Minas Gerais p. 148.
[12]LUHMANN, N. (2005). *Confianza*. Santiago de Chile, Instituto de Sociologia. PontíficiaUniversidad Católica de Chile, 2005.
[13]FERRAZ JR., T. S. (1974). *Teoria da Norma Jurídica*. Rio de Janeiro, Forense, p. 12-13.
[14]FERRAZ JR., T. S. (1974). *Teoria da Norma Jurídica.* Rio de Janeiro, Forense, p. 14.
[15]According to theories of VIEHWEG, T. (2008). *Tópica e Jurispruência.* Porto Alegre, Sérgio Antônio Fabris Editores.

This is because the possibilities of combinations of meaning, through the selection of the most appropriate information to shape the discourse, ends up generating an increasingly complex combination of content and possible positioning of the emitters and receivers whose position in the communicative chain changes dynamically, at all times.

A system of communication, however, especially the system of law, would not withstand a high information load that occurred randomly. The dialogical system in the field of law is based on specific logical-linguistic structures, responsible not only for allowing the continuity of communication, but also the maintenance of the operational structure and its code. For this, the law needs to go beyond the mere description of the world, so that it begins to absorb communicative mechanisms of pragmatic logic – widely used in other normative communication systems, such as religion and morality – to achieve success in its communicative dimension: set the parameters so that the code *legal/ illegal* is effectively applied to reality, reducing the contingency of social systems from the pretension of directing human action.

The development of the communicative structure of legal language was based on the deontic logic, that is, a cognitive-instrumental apparatus based on the idea that the establishment of the communication channels and, simultaneously, of their respective transmitting and receiving centers would occur in the sense that a message, in theory, would have the specific purpose of delimiting the communicative action of the receiver, determining an adequate form, according to the autopoietic bias, experienced and made possible by the communicative structure of the right system to continue its communicative action inserted in a given social system . That is to say: the norm "killing someone" establishes the zone of communicative action from a specific logical apparatus, that delimits the communicative action not to kill someone, putting the opposite communication in the ambit of the illicitness.

This deontic logic, in fact, shows that legal communication, when described at the level of a second order observer, could be studied from propositions that are structured from the syntactic and semantic point of view with a specific pragmatic purpose, which is the establishment of a standard on how the continuity of the communication process shall take place. Explain yourself. So far, we have come from the premise that the system of law is a system of communication that participates in a singular way of social systems. A complex communication system is intimately supported by a linguistic apparatus that has an immensely malleable symbolic structure. Thus, the basic communication of social systems moves in the sense of describing their environment, adding to the internal communication more and more information that can be used, or not, in the sense wire. When someone says "so-and-so is torturing John Doe for hours, its purpose is the death of the latter", define my communication in a descriptive way, drawing up a linguistic assertion that describes both an act (torturing) and a fact (it is torturing for five hours). However, affirmative or negative assertions by themselves do not allow the existence of a pragmatic analysis of discourse from the point of view of the legal system. In order to effectively influence not only the communication, but also the communicative behavior of the subjects, from the point of view of this system, it is necessary to use certain types of logical-linguistic operators that establish this zone of predominance or communicative ascendancy in an emphatic, incisive fashion. This modality is given to us from the structure of the functors, or modifiers of the communication of normative nature.

In the saying of Tércio Sampaio Ferraz Júnior, the functors are "linguistic operators allowing us to mobilize assertions"[16]. They come in three different legal forms: deontic, prohibitive and permissive functors. The theoretical structure of the functors is located in the deontic logic, that is, the normative study of valid reasoning around a certain imperative, a duty. In this sense, when incorporating the deontic logic to the design of normative communication, the law establishes the parameter so that its operation can go through conditions forming sense. From the example given in the previous paragraph, it can be observed that in the course of the deontic logic, the descriptive assertion can be predicated in three axes: "it is forbidden to torture someone"; "it is permissible to torture someone"; "it is mandatory to torture someone". These three hypotheses are sufficient to show all scenarios of communicative interaction of a legal nature. It could be questioned that the law would have in its syntactic formulation other forms of expression of meaning, such as those rules that authorize a given action, that establish competence, that allow the delegation of competence, that condition the lawfulness of certain presuppositions, etc. . However, all this can be reduced to three fundamental functors. A rule that delegates competence is aligned with the characteristic of a permissive rule or a prescriptive rule, since competence in the field of public law may have the structure of a power-duty.

[16]FERRAZ JR., T. S. (2011). *Introdução ao estudo do direito: técnica, decisão, dominação*. São Paulo, Atlas, p. 103.

A norm that conditions a certain juridical act aligns itself to the deontic structure, establishing a duty that, if fulfilled, allows that given action is practiced, for example. It is possible to visualize that within the structure of communication of the system of the right an interactive correlation stands out whose product questionable is the persuasion with respect to certain behavior, whose nature is metacomplementar under the bias of the pragmatics. This means that when the second-order observer studies analyzing the communicative operation in his systemic process, he begins to observe that the communicative poles, emitter and receiver, or speaker and listener, may present reciprocal reactions of a complementary nature. Each of the poles, in active communication, tries to give the other the tip of the next argument. Even if there is disagreement, it must be pointed out that communication has been established, if it is producing meaning. And in the case of the law system, communication tends to influence the behavior of agents. In the interactive evaluation, it is possible to arrive at three different scenarios in the relation between the transmitter and the receiver of the installed system: one can have a confirmation, a rejection or a disconfirmation of the operation[17]. The operative confirmation occurs when there is acceptance of the direction proposed by the sender, so that the receiver understands and assimilates. In rejection, the receiver denies how the message produces that given sense, so that it still understands, but disagrees. In the case of disconfirmation, what is observed is the disqualification, by the listener, of the sender's message, from which a correlation between the non-understanding or the action of ignoring the agent's own message is installed. From the point of view of system validation, we march under the confirmation or rejection bias. The autopoietic law system discusses validity within the sense-forming of its operation so that what cannot belong to the system is selected out (rejected) and what can be shared as normative communication is included (confirmed). In the system of law, then, the meta-complementary relationship can only occur at the levels of confirmation or rejection, and never at the level of disconfirmation, because in this case there is total disregard for the authority figure of the issuing body, which denatures the constitution of the legal in its institutional aspect. There is no denying the substantial relationship between the sources of production of normative communication and their respective receivers, especially as regards a dynamic bias of apprehension of the phenomenon at the second order level.

We can preliminarily conclude that in the structure of the legal rule produced within Parliament, whose intention is to establish communication at the levels of generality and abstraction, three levels of configuration of logical operators of pragmatic communication can be identified. At the first level, those rules are to be considered, the communication of which, as regards the degree of persuasion, establishes an obligation or a prohibition - notwithstanding the fact that every obligation is a prohibition in a positive sense, that is to say, I must do so and not practice an omission, and vice versa. Concerning the obligation and the permission, there is a complementary relation imposed: the subject that behaves as a receiver translates the information added by the system of the right to communication as being binding of conduct.

Another level is according to the structure of permissive norms, which in the global sense of the legal system establish an exception to the given legal rule, which can be called permissive dependent. At this point, there is a conduct that is imposed on the agent, but another legal rule combines the global meaning allowing conduct of the same type, with effectiveness conditioned to certain factual and legal conditions of achievement. A permissive dependent rule only allows by making an exception.

Finally, the presence of independent permissive norms, which through the functor "is permitted", is contacted, ends up qualifying that a given action is permissible or optional in relation to the law itself, without any norm in relation to the normalized matter in the system that regulates in a prohibitive or obligatory manner.

In the scope described herein, the fundamental one for establishing the pragmatic relationship at the level of normative communication is, first, to identify that the sending center is endowed with authority, which links communication directly to the system. This center of authority is responsible for the propulsion of communication in a positive law perspective: the norm is produced in Parliament and, because of its legitimacy based on political-legal communication processes, binds agents to produce their speeches in a reflexive manner and within of the autopoietic logic of the system of law, performing normative communication. What is not in the scope of communication has two biases: either it is not regulated by law, so that the silence of the sender matters in an indifference to that action, or it is not valid, and must be expunged from the communication thread in the system of because it makes no sense.

[17]FERRAZ JR., T. S. (1974). *Teoria da Norma Jurídica.* Rio de Janeiro, Forense, p. 57.

**2.2 The normative pragmatics and the hypothetical imperatives in Law**

A normative pragmatic theory is one that must bring the imperative of law to the field of language. Given the structural constitution of communicative systems, it is observed that the normative perspective is given in the sense of pointing, in most cases, a direction for the conduct of the agents that participate in a given social system. If we consider the pragmatic nature of legal communication, we must always ask ourselves if communication is to be established, there must necessarily be an issuing center and another receiver, which can process the information and continue operating the system according to the limits imposed by the system itself system. In this sense, when we visualize the pragmatics, we must ask: who is the recipient of the legal rule? To whom should communication persuade the continuity of the communication chain towards the formation of meaning?

If we adopt a pragmatic stance marked by an imperative notion of law, all legal communication is intended to modify the behavior of others[18]. In this sense, pragmatics reveals itself as a mechanism for evaluating the effects of an emitter's message on the receiver, so that there would only be normative communication from the idea of assuming the existence of a "defendant subject", or the recipient of the inaugural communicative act. If there is no receiver to process and continue communication, it is not properly spoken of in the existence of the operation of the system of law.

Given this conformity, it can be observed that the normative communication structure is hypothetical. The law does not regulate something from an absolute predisposition regarding the content of the information transmitted in interactive communication. It is not a matter of establishing categorical imperatives, proper to moral systems, which determine that an action must be carried out, or rather that the meaning of communication should be given in such a way without questioning any kind of conditioning for it. In the case of the system of law, the indication of the course of communication is hypothetical, where the structural formatting of the system is generated within the framework of legislative political centers, which have the authority to perform self-reproduction while preserving systemic autopoiesis. Therefore, the political-juridical centers of formation of the communicative structure are marked, in democratic societies, by the deep degree of policontexturization[19], that is, an infinite variety of centers of communication irradiation in the larger logic of social systems. This policontexturization eliminates any pretension that normative communication is categorical, since the choices in relation to the semantics of the normative structure, of the relation between the norm and its object - content - does not happen through a universal formula, unconditional, but rather by a formula that has as structural structure a relativity of the ways of experiencing the communicative experience.

In this way, the normative communication of the system of law can only be hypothetically configured, since communication is established with a view to achieving a result that is not good for itself, but which is good or useful in the face of that social contingency, factual, specific framework. Thus, normative communication proposes to carry out more communication, allocate information and complexity to the communication network in order to achieve a specific purpose. Communication is conditional, it depends on certain contingency issues to be carried out.

In this assumption, all normative communication also lends itself to establishing a purpose that is influenced, as it could not be, by the political communicative structures existing in a given social system. It is for this reason, for example, that the Constitution is considered as a structural coupling between law and politics in a given society[20]. It is the Constitution that allows the pretension of harmonious coexistence between power and law. And, in this sense, every legal rule produced through due legislative procedure has a specific function in the communicative system: it drives the operation of the system to fulfill the purpose given at that moment by the communication itself, considering its specific pragmatic design.

**2.3 The communicative interaction under the bias of the legal rule: commands and advice**

But the formulation of normative interactions within social systems is not only limited to the system of law, especially when it is considered that many social systems concretely produce norms or other types of commands that aim, to some extent, to influence behavior of agents. But the communicative field seen as a practice of persuasion goes beyond the structures related to commands, usually interpreted under the imperative bias.

[18]BOBBIO, N. (2010). *Teoria geral do direito.* São Paulo, Martins Fontes, p. 112.
[19]NEVES, Marcelo. (2009). Transconstitucionalismo. São Paulo, Wmf Martins Fontes, p. 24.
[20]LUHMANN, N. (2016). O direito da sociedade. São Paulo, Martins Fontes, p. 630-631.

In fact, the act of advising an interlocutor also opens a communicative channel whose specific purpose is to give a scenario of possibilities of action to those who receive advice. The distinctions between commands and councils, then, become an important tool to verify, from now on, what would be the structure of a budgetary legal rule in syntactic, semantic and, mainly, pragmatic aspects..

Commands and advice coincide for both being forms of prescriptions. The first is an imperative prescription, which has the pretension and make the conduct of others obligatory according to the parameter communicated. The latter, according to Bobbio, are milder prescriptive forms whose degree of attachment is much smaller with regard to the influence of the behavior of others[21]. The classic distinction between commands and advice was made by Thomas Hobbes in his book *Leviathan*.

Hobbes considers five fundamental factors to distinguish orders, or commands, from boards. First, it says that whoever commands something is aimed at the benefit itself, while those who advise is aimed at the benefit of the advised. In both, a subject says "do that" or "do not do that"[22]. Moreover, in issuing a command, the receiver may be obliged, by force, to do what is commanded of him; On the other hand, when issuing a council, no one could be obliged to follow it, because the damage by not doing what was advised is only of the receiver itself. Third, Hobbes argues that no one can have the right, or the power to give advice to other people, for it would only have the power to actually influence the behavior of others who may have some benefit for themselves. Fourth, with regard to the consequences, if the council results in an evil for the advised, nothing can be done against the counselor, because who asks for advice to another person is subject to receive any type of advice, being allowed to incorporate to his volition or not what was said. Finally, the council is followed by its content, which agrees to a greater or lesser extent with a sense of fairness, common sense, whereas in the case of the sovereign, order must be followed by reason of its authority, of his figure.

From these explanations, analyzing them in our time, certainly many distinctions appear to be imprecise or misleading. Some interesting notes are given by Bobbio concerning Hobbes' theory. Regarding the argument that to issue a command one must be vested with authority to do so, one has to verify that in the field of law there are advisory bodies that effectively issue advice for certain institutional matters. In this sense, the scope of authority is that it is different, but not necessarily someone giving advice is devoid of authority for such. Moreover, a council is not necessarily given for the good of the advised, even less an order is given for the benefit of those who are endowed with authority and power for this purpose. As regards the matter of an order or of a council, we usually follow normative prescriptions simply because they exist, even if we do not agree with their contents, whereas in the case of councils, the receiver of the message usually concludes it or not, because of checking that the prescription is of some use to you, is good for you. As Hobbes puts it, and this seems to be the most important fact for effective distinction between councils and commands, the recipient agent in the case of councils has a faculty to follow or not certain prescription. When an agent receives an order from someone with specific authority and competence, he has no choice, he is obliged to follow it[23].

In this scenario, if we could describe the communicative system around a pragmatic dynamic about the councils, as a true autopoietic system, we could identify a binary code for the prescriptions of the behavior of others around the advisable/inadvisable formula. This means that persuasive activity is present in the communicative context, but its scope of possibilities of free and unimpeded action on the part of the receiver in an interactive situation is broader than in a normative context.

The system of law effectively moves through the *legal/illegal* code as a system that carries as basic operation the communication, taking with it for such an evaluation of systemic pertinence the deontic, prohibitive and permissive functors. In the case of the presence of the first two modifiers in a communicative situation, there is no option of action without the configuration of unlawfulness in the case of the contrary or communicated behavior. If I do not behave according to what the authority of law compels me, I move in the field of illicit, making a disappointment to the normative communication, which reveals the counterfactual aspect of the law. Nevertheless, if I take a certain action that is forbidden to me, in fact I break the rationale intrinsic to that interactive communicative support, so that I am owed a legal consequence in relation to the act.

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21 BOBBIO, N. (2010). *Teoria geral do direito*. São Paulo, Martins Fontes, p. 88.

22 HOBBES, T. (2002). *Leviatã*. São Paulo, Martin Claret, p. 189-190.

23 BOBBIO, N. (2010). *Teoria geral do direito*. São Paulo, Martins Fontes, p. 89-91.

Thus, although there is a correlation between commands and advice, according to the concept of prescription, both of them differ fatally in what concerns their pragmatic aspects in relation to the receivers of the message emitted by the system. The juridical operation, normative communication, in its deontic and prohibitive aspects, does not give us an option: either I understand the system and I behave in a way to continue the thread of meaning, or suffer the consequences foreseen in the system itself to corroborate not only its authority – from the ontological point of view – as well as its own code, which gives it the uniqueness to follow as an autopoietic system.

**3. Classical conceptions about the legal nature of the budgetary rule**

The introductory remarks made so far are aimed at pointing out the insufficiency of the theories produced so far as regards the legal nature and function of the budgetary rules of a legal system. We shall go through the three main theories developed so far by the doctrinators in order to demonstrate their inadequacies and misconceptions in analyzing the structural and functional condition of the budgetary legal rule not only from the point of view of the legal system but also from the perspective of the other surrounding social systems , which make up the communicative environment for the performance of law. It is emphasized that all of them make mistakes especially because they stop to study the phenomenon from an ontological point of view. Within the framework of a theory of systems, the question shall be faced from the point of view of the operation, normative communication in semiotic perspective.

**3.1 Formal conception**

The theory of the formal legal nature of the budget rule has as its main idealizer the German jurist Paul Laband, who dealt with this normative species produced by Parliament as if it were a mere authorization for the Executive Power to perform acts of an administrative nature. In this sense, in forming the budgetary legal rule, the Legislative Branch would only establish a protocolary expectation regarding the arrangement of state revenues and expenditures, without any type of binding for the Public Administration. The discussion about this position is then reflected in the procedural field, so that many constitutional courts disregard the existence of a subjective right to comply with the prescription contained in the budgetary legal rule. For Laband, the budget would not have any kind of legal rule per se, so one would not have to speak in order or imposition.

In its French version, evidenced by the theorizations of Gaston Jèze, the formalist vision reaches even greater radicality. Firstly, Jèze considers a simple legal act, which is divided in the forecast of income and expenses. With regard to expenditure, it leaves for a double question: those countries that adopt the criterion of tax annuity, that is, that there would only be the imposition of tax by means of authorization of the budget norm, year by year, for both the budget takes the legal outline of an act-condition; in countries where there is no tax annuity rule, the budget from the revenue point of view does not contain any legal significance. On the other hand, in reference to expenses, there is also a bifurcation. If the expenditure is pre-existing, fixed, such as interest on debt, pensions, payroll of servants, etc., the budget would be devoid of any legal significance, since Parliament would have the legal duty to compose these expenses in the budget item, linked competence. Alternatively, the budget could contain authorizations to create future expenditures, so that it would have individual legal situations, hence the nature of act-condition, without any legal significance[24].

In Brazil, most of the doctrine considers the budget law as formal. Authors such as Ricardo Lobo Torres teach that to provide materiality to the budget law is to raise the possibility of invoking subjective rights for third parties, which would prevent the Administration's freedom to carry out its planning. Rather, it recognizes that the dichotomy between the law of law and formal law, as well as the doctrine and jurisprudence in relation to other branches of law, would weaken the principle of legality, bringing together an inflation of the perspectives of the executive branch in the various legal spheres – if other rules, that is, the tax standard, are considered as being of a purely formal nature, which would bring about an unreasonable exacerbation in relation to the scope of discretion of this Power. However, he recognizes a "negative control function of the Executive Branch", since the budget law would propose a limitation on public indebtedness and the policies of revenue waivers[25].

[24]FONROUGE, C. M. G. (1993). *DerechoFinanciero*. Buenos Aires, Depalma, p. 159-160.
[25]TORRES, R. L. (2000). T*ratado de direito constitucional financeiro e tributário, volume V: o orçamento na Constituição*. Rio de Janeiro, Renovar, p. 76-77.

The formal theories were developed in a constitutional context of predominantly liberal character. In relation to this perspective, there seems to be a disregard for the imperative of the budget due to the inexistence of a complex of obligations of the public power with third parties, as it happens with the Social State and the Democratic State of Right. Even from a liberal perspective, there seem to be conceptual misunderstandings, especially regarding the definition of starting points. When analyzing the normative budget structure by revenue bias, the first point is to note: there is a sending center of a given message and a receiving center. This message is not revealed with hollow content. Effectively it constitutes not only a zone of action for the Public Administration in relation to the state finances, but also reveals itself as one of the four basic pillars to verify the autonomy of a State: legislative autonomy, administrative autonomy, jurisdictional autonomy and financial autonomy. Without financial autonomy there is no way to constitute the State, insofar as the institutional structure has an expense for its existence, and to fulfill the obligations arising from the maintenance needs of the state structure itself, a budgetary action of composition of revenues is necessary for part of State. It cannot be denied that every State is ultimately a Financial State (Financial Power).

Considering this, it cannot be assumed that the spectrum of state revenue formation does not generate a normative message. On the contrary. The state is obliged to collect for the maintenance of its own existence, and this without there being any kind of explicit rule in determining order. What maintains the normative structure of the public budget is a "balance law", from which it is extracted that for given expense there must be a correlative source of resources. In this way, it can be deduced from the budgetary norm itself that it is the duty of the public manager and the parliament itself to carry out all possible undertakings so that the composition of revenues contained in the normative plan can be achieved. An example of this is the case of the Brazilian federative structure, directly influenced by the Fiscal Responsibility Law, whose inspiration is New Zealand. The art. 11, sole paragraph, of the Brazilian Fiscal Responsibility Law establishes that the federative entity that does not institute the taxes whose respective competence is inscribed in the Federal Constitution of 1988, cannot receive voluntary transfers from another federative entity, through a cooperation agreement. Obviously, the Fiscal Responsibility Law does not make up the budget rule, only informing it in an indirect way regarding the persecution of the state revenue. But it does contain important information: the composition of budget revenues is a duty, which must be fully exercised within the framework of the budget law itself. Without revenue realization, there is no state activity. And the existence of revenues, according to the forecast in the budget rule, generates the obligation of correlation of the concretization of the planned expenses, especially those that have fundamental rights.

In the perspective of expenditure, the formalist chain even argues that certain preexisting expenditure would not have any legal significance. From a normative theory backed by semiotics, an affirmation of this nature is reason for incisive reflection. How can something be communicated and, at the same time, carry no meaning? At least the negative meaning of non-adequacy or non-formation of meaning should lead to its recipient. But it further amazes this form of reasoning when it comes to something that is transmitted in a logical, clear and coherent way within a normative budget species. All expenditure, of any nature, conveys a legal meaning, both from the internal perspective and from the external perspective of the norm. From the internal perspective, that the expenditure shall only be effective, within the scope set by the budget rule itself, if there is the existence of revenue that gives it subsistence. An example of this is the budget-level effects of a recession or a real economic depression. There is an intercommunication on the double side of the budget norm and, therefore, there is also meaning in correlation mechanism. In this way, public debt interest expenses, costing expenses, and some kinds of capital expenditures that fit into a logic beyond the financial year that the budget rule is effective, inform not only the applicability of the budget rule, as well as the obligation that in case of revenue composition, that the normative commitments contained in the system of law be fulfilled, under penalty of illegality. In the same way, the presumed formulation around the idea that in providing for commitments for future expenses, the budget would be mere act-condition, not containing legal significance.

### 3.2 Material conception

Contemporary to Laband's conception, Myrbach-Rheinfeld was the Austrian theorist who defended the material conception of the budget law, according to which it would not only create new rights but also innovate in financial laws.

This administrative understanding of the budgetary norm proper to the formal current is opposed by arguing that the budget actually indicates as a unitary and indivisible document, which has as its source the Legislative Branch itself, which makes it a law in the institutional sense of the word, with content perfect and full legal effects. This conception, in Germany, was accompanied by Zorn, von Rönne and Haenel[26].

In the line of Sainz de Bujanda, the budget is a law in full sense, because in its material aspect links the activity of Public Administration. With regard to the formal aspect, it is always approved by the state body with specific legislative competence. According to Fonrouge, to visualize the budget law in a dualistic aspect is incompatible, for example, with the Argentine constitutional system, because this conception ends up pursuing political purposes of submission of the parliament to the Executive. Not to mention that from the point of view of its normative structure, the budget law shows itself as a perfect law, containing in itself all the production of effectiveness of a common law[27]. In Fonrouge's view, there is no way to break up the budgetary phenomenon, since the acts of provision (considered administrative acts proper) and the legal text that approves the possibility of their existence (law itself) constitute fragments of an organic whole, not moving independently and meaninglessly in the legal world.

In Portuguese doctrine we find the position of Sousa Franco, who argues that the budget law is a *special material law*, approaching the theses that predict the budget law as law of orientation or law of programming. For this reason there are some fundamental reasons: a) it is predicted by specific economic variables; b) it is an imperative estimate for state organs and agents, since there is an obligation to collect revenues and are authorized to incur expenses up to the respective global limit; c) it is not confused with administrative acts, since its function is to ensure the primacy of political representation over state administrative management; d) in addition to essential contents of the budget according to the Portuguese legal order, there are related natural contents of ancillary or natural character and accidental contents; e) The budget law produces normative effects in relation to the State, the Administration and their respective organs and agents; and f) recognizes, in the Portuguese legal system, what in the Brazilian legal system is known as "legislative contraband", that is, the binding of norms that are not budgetary in nature – for example, criminal norms, concerning servers, etc. - on the conduct of third parties, which are validated by the system[28]. He concludes, therefore, that the budget is a legislative act, with a special material nature[29].

In addition to these two currents, there is one entitled "*sui generis* law theory," which attempts to adopt an intermediate position between formal theory and material theory. Its general assumption is that the budget, in relation to the expense, would be an administrative act-condition, and that in relation to revenue, it would have a material nature, since the budget forecast would be essential for the effective collection of taxes. The theory suffers from the lack of systematization and deepening in its conceptual bases, although pointing to a minimally interesting path.

The innumerable perspectives of the material current show us that the budgetary phenomenon is much more complex than the mere forecasting of revenues and expenses, stripped of legal substance, as defended by the formal current. However, this does not seem to be the case with a law in the material sense, in the full meaning of the concept, in spite of numerous correspondences. From the pragmatic analytical of the budget norm we proceed to study critically the controversial points in relation to each of these positions.

## 4. A new conception: a budgetary legal rule as disjunctive-integrative communication of conditioned-linked effectiveness

The analysis of the budgetary legal rule is performed here based on two complementary conceptual planes: the theory of systems and the pragmatic theory of communication. In this sense, it is assumed that the legal rule is a communicative phenomenon inserted in a specific social system, that is, the legal system. The system of law is an example of an open system, because it is operatively closed and cognitively open.

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[26]FONROUGE, C. M. G. (1993). *DerechoFinanciero*. Buenos Aires, Depalma, p. 161.

[27]FONROUGE, C. M. G. (1993). *DerechoFinanciero*. Buenos Aires, Depalma, 1993, p. 163.

[28]In this specific case, the Constitution of the Federative Republic of Brazil of 1988, in its art. 165, paragraph 8, prohibits any type of provision in the budget law that is foreign to the forecast of revenues and the determination of expenses, except in cases of authorization for the opening of supplementary credits and contracting of credit operations, albeit by anticipation of revenues , according to the law to be produced in the infraconstitutional scope. This fact removes the consideration, in the Brazilian legal system, of the argument raised by Sousa Franco.

[29]FRANCO. A. L. S. (2015). *Finanças Públicas e direito financeiro*. Coimbra, Almedina, p. 397-402.

This means that their identity is realized from their *legal/illegal* binary code and concretized through their basic operation, which is normative communication. Its cognitive openness means that the system does not end in itself, on the contrary, it has the capacity to correlate with its respective environment and to reduce the complexity of the environment in its own structure, converting communications exhaled by other systems for itself, which leads to at the same time increasing internal complexity in order to reduce the total complexity in the communication of social systems. It is then approached that the structure of law and its operation have a dynamic perspective, always apt to be verified by a second-order observer in its continuous evolutionary activity[30].

In the field of theorizing about the budgetary legal rule, it is noticed, at first, that its internal aspect is composed of a paradoxical communication. There is a sense of contrary, dependent and complementary vectors in their communicative composition, which is nothing more than the intrinsic correspondence that must exist between revenues and expenditures within their programmatic function. On the other side, in its external aspect, the budgetary legal rule plays a pragmatic function, binding the action of the subjects for which it is intended, the public agents. Before starting the pragmatic view, the study is made of the complex composition of normative communication at the budget level within the framework of systems theory.

It was pointed out that communication has a feedback system in relation to the existing interaction between sender and receiver in establishing a communicative relationship. Regarding the composition of the budgetary legal rule, we can identify a retroactive mechanism within the domestic sphere and three mechanisms of this nature in the external sphere. All converge towards the instrumentalization of communication around the concepts *of input/output and positive feedback and negative feedback*.

In the communicative composition of the budget norm in its internal aspect, the mutualistic relationship between revenues and expenses in a paradoxical configuration stands out, forming a unique retroactive mechanism. Both are complementary extremes of an economic composition that serves the purpose of giving concretion not only to the legal system but also to the State itself. In the revenue bias is the propulsive base of the state economic system, without which the communication itself does not settle. On the expense side, it is the basis of the active implementation of the system of law, in its institutional aspects and in the fulfillment of its aims regarding fundamental rights and guarantees, without which there would be no cause for the very existence of such a system. The revenues alone are meaningless, expenditures devoid of their respective economic source are devoid of form and existence. The relation is then paradoxical, because the expense depends on the revenue to exist, and the revenue, to some extent, depends on the demand for rights added to the law system itself, and also from the state institution itself. The first statement is easier to visualize, because in theory every expense must have a resource source to be realized. In the case of the second, the factor is combined: the greater the volume of normative communications guaranteeing rights and fundamental guarantees representing social rights in a given legal system, the greater the demand for the existence of revenues. In the case of a system that tends to have more liberal operating experience, the pressure on the revenue factor is lower, which determines a more soft, less incisive conformation of the collection system in the property right.

The economic rationale that underlies the subject of budgetary law is extracted from this first point of view. At all times, internal communication deals with the phenomenon of scarcity. If there is not enough revenue composition, the tendency is for the budgetary norm to find a break-even point, forcing the expenditure to decrease, so that the government, when constructing the budget norm, prefers a contractionary policy, with eventual increase of taxes and policies to combat inflation, to mitigate the economic effects on market prices, which impacts the composition of expenses. If, on the other side of the form, from the abundance, there is a growing composition of revenues, with the configuration of surpluses, the tendency is for the idea of budgetary stabilization to occur with a greater increase of expenses, especially in the promotion of social rights and policies to stimulate infrastructure, since constitutional program norms point to a continuous state-making towards the achievement of society's goals, especially the reduction of social inequalities. Thus, the increase in expenditures may also be related to expansionist policies in the economic bias, especially with regard to the promotion of aggregate demand in a given economy.

[30]LUHMANN, N. (2016). ***O direito da sociedade.*** São Paulo, Martins Fontes; (1983). *Sociologia do Direito I*. Rio de Janeiro, Tempo Brasileiro; (1985). *Sociologia do Direito II*. Rio de Janeiro, Edições Tempo Brasileiro.

An example of this is the case of Japan in the 1990s that injected trillions of dollars into infrastructure investments to stimulate a greater circulation of goods and services, even if such infrastructure in practice had no direct utility to the population[31].

At the level of internal communication, one may ask: are the systemic *input and output* zones within the budget norm in the sense of always pursuing budgetary equilibrium? This is an extremely complex question, and requires legal and economic analysis to be properly visualized.

Regarding the economic perspective, most economists do not agree with the reasoning of always requiring a balanced budget year by year[32]. In this context of analysis, economists generally defend an average of years of budget deficit - considering moments of economic downturn - and years of budget surplus, based on economic performance and consequent increase in collection. In this aspect, it is approached that in economically unfavorable moments the influence of the automatic stabilizers would be in the sense of demanding a greater transfer of income, increasing the deficit, so that with the economy being recovered and private investment returning to salutary levels, the balance could offset the surplus, with the respective retraction of state investments in the bias of the expenses and increase of the collection because of the increase of the economic activity and respective increase of the collection. In this sense, the idea of constant budget equilibrium would harm the ideal functioning of the automatic stabilizers of the economy. This is just one of the visions, and is generally associated with the adherents of the Keynesian current.

On the other hand, legal systems effectively bring innumerable rules that, especially after the influence of public management practices shaped within a so-called neoliberal and monetarist view, put as the main purpose for legal systems the concretization of the ideal budget balance. In this scenario, the proposal incorporated by the legal systems in general, especially the Brazilian one with the Fiscal Responsibility Law, occurred in the sense of absorbing the principle of budget balance as the golden rule of the system, considering that the State should carry out its budget composition for the implementation of an economic policy that guarantees the realization of primary surpluses, with monetary stabilization, low inflation and efficiency of the correlation between revenue generation and expenditure effectuation. In times of economic downturns such as decelerations, recession or depression, the budget equilibrium policy should then guide the contraction of indebtedness along the path of spending, with the consequent increase or not of tax collection so that balance and public debt levels return to acceptable levels.

But the equilibrium situation of the communicative composition in the internal scope of the budget norm also occurs in a correlation with the investments and long-term state policies that occupy the environment within which the budget norm is born, especially the political code. Thus, the average of the variations between deficit and surplus situations, from a perspective, for example, of the Constitution of the Federative Republic of Brazil of 1988, must be considered in the face of the idea that a more rigorous budgetary management is necessary for ensure the achievement of long-term social policies, which cannot be implemented directly, in the short and medium term, due to the scarcity of resources for such an attempt. As Sousa Franco puts it, the practice of ordinary or current budget surpluses" represent savings created by the public sector: if they are used to finance reproductive investments, this is an advisable way of accumulating capital and investing"[33].

By explaining superficially this dynamics in the feedback mechanisms intrinsic to the paradoxical composition of the budget norm in its internal aspect, we are able to see more broadly the other three modes of effectiveness of pragmatic normative communication of this normative species, which make possible the existence of the aspect itself internal. The first is the correlation of revenues with the respective environment. In fact, the financial law, in the western constitutional perspective, is established as the structural coupling between law and politics, with reciprocal reflections and correlations on the economy. This means that in making the composition of the budgetary legal rule, the political vectors represented by the Chief Executive and Parliament – in the democratic budget view – the political code *can/cannot* is bound by the legal code *legal/illegal*. It is explained: the composition of the budget norm as normative communication is made through the circumscription of the political activity by the limits established by the normative communication that regulates the constitution of the budget norm. In this sense, it is possible to observe aspects of the formation of meaning from the point of view of politics, law and especially the economy.

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[31]KRUGMAN, P., WELLS, R. (2007). *Introdução à economia*. Rio de Janeiro, Elsevier, p. 604-608.
[32]MANKIW, G. (2009). *Introdução à economia*. São Paulo, Cengage Learning, p. 803-805. KRUGMAN, P., WELLS, R. (2007). *Introdução à economia*. Rio de Janeiro, Elsevier, p. 816-817.
[33]FRANCO. A. L. S. (2015). *Finanças Públicas e direito financeiro*. Coimbra, Almedina, p. 386-387.

Public revenues are established through a complex feedback mechanism. It depends on the variable normative communication in terms of its composition from current revenues – mainly tax revenues, which make up the largest volume of resources in this area of the budget norm – and of capital revenues - such as revenues of state credit operations and disposals of assets. Before the political face, there is a calibration of the spectrum of necessity: political communication, which influences the design of normative communication, will have to use a strategic sense, with methodology that takes into account the trade-off between increase or decrease, of tribute and constancy of economic activity, which in turn takes into account the behavior of individuals in the market logic. In this context, the budget rule in its face revenue is established in a dynamic feedback system of continuous transformation of *inputs into outputs*, and vice versa, that is, the retroactive reaction of the factors that compose public revenues is verified from the reception of a message that is converted into information in the budget normative system, operational conversion, and consequently enables the realization of a new message for its respective environment, in the form of *outputs*.

At the level of expenses, the same structure occurs, but with communicative mediations and totally different meanings. In this parameter it is verified that there is always demand for social systems – especially channeled through political communication, which translates at the same time into the communication made by political institutions at the level of Parliament and the executive branch, as well as the communication network emanated by society itself in its democratic perspective. This demand is, in most cases, contained as a subjective right, are demands arising from the existence of fundamental rights and guarantees, especially those of a social nature. The face of state expenditure, then, suffers continuous influx of inputs related to the right to housing, right to existential minimum through direct government income transfer – pensions, social programs such as the family grant, costing expenses, etc. – and indirect transfer, such as public health and education policies. In the form of inputs, the natural tendency, only in relation to the retroactive expenditure system, is that more and more demands arise, especially in those societies that experience the combination of positive birth rate and increased life expectancy. Already in the form of outputs, looking at this retroactive system in the abstract, the trend is that there are more and more social benefits contained in the budget, especially because it effectively compose the structure of the State, which is not an end in itself. Beyond this relevant aspect, it should be noted that the communicative fabric of the expenditure vector is also informed by the existence of numerous capital expenditures, such as investment expenses, financial investments and capital transfer. All this sum of aggregates is interactively nourished by their communicative tangency in the face of the social systems that make up their environment.

The correlations between existing inputs and outputs relative to the environment of retroactive revenue and expenditure systems allow the inputs and outputs of the internal correlation of paradoxical communication between revenues and expenditures within the scope of the standard to exist. Despite being within a structure that reveals itself as normative communication, the triad retroactive system of revenues in the face of the environment, retroactive system of expenses in the face of the environment and retroactive system revenue-expenditure in the internal scope reveals a communicative composition apt to explain the Structural couplings between politics and law, with an intimate relation to the economy system. At this point, it must be distinguished that revenue and expenditure form retroactive communication systems with a certain operational autonomy, and that when placed within the internal scope of the norm, they present their own operational constancy, of a paradoxical nature.

Finally, after visualizing the internal face of the budget norm and its dynamics between its two poles, it can be stated that this constitutes normative communication disjunctive-integrative. There is disjunction because they are communicational operators with their own characteristics and contents before their function within the normative structure. There is integration because there is a paradoxical relationship, both internally, exchanging inputs and outputs in a true retroactive system. It is within this general aspect designed that formal conception theorists understand the budgetary legal rule. As a mere prediction, they see it as a plan, which is modified by political and economic contingencies, confusing their qualitative-quantitative dynamicity with absence of normative effectiveness, or pragmatic aspect.

However, there is a fourth form of manifestation of the composition normative communication studied that characterizes the budget norm properly as a legal rule, and not as an adverse communication to the system of law, as the current formalist. This is due to its normative unity, that is, its internal disjunctive-integrative communication revealed as true pragmatic normative communication. Here we take the total norm, inserted as an operation in an autopoietic system.

From the perspective of the theoretical premises contained in the introduction, it was stated that the pragmatic aspect of normative communication is based on a communication that aims to make sense in the systemic perspective, whose peculiarity is the constitution of an interactive situation that allows the visualization of the meta-complementary aspect of normative communication. In the field of the budgetary norm, its communication as a total norm occurs in relation to its recipients. These can be the public managers and all citizens who have in themselves the source of the state's own power, if evaluated the communication given in a democratic context. Within this aspect, the internal dynamic formation of the retroactive mechanism established between revenues and expenses takes in the form of normative communication in the face of an act of communication, that is, the act of sharing information intentionally in the context of the legal system, autopoietic operation.

This act of communicating, in turn, reveals itself as a prescriptive communication from the point of view of the legal system, attempts in some way to influence the formation of meaning in the continuation of communication by the receiver of the message, or recipient of normative communication, specifically, not randomly. At this point, the addressee, who is inserted as an operation within the structure of the system of law, begins to perform an act of understanding, since it forms the meaning from the absorption of information by the structure itself. However, the prescription given by a budget rule, because it is true legal rule, cannot be qualified as mere advice, but effectively as an order, a command. This conception approaches the theoretical view that considers the material nature of the budget norm.

Although the budgetary legal rule really manifests itself as a command, from which the pragmatic aspect of its communication is extracted from the perspective of the deontic/prohibitive functors, in terms of systems theory that considers the structure of this rule to be a retroactive system, one must recognize that the command is not full in its materiality, being constantly updated from the contingency of normative communication in this reality. It is said, then, that normative budget communication has conditioned-bound effectiveness. Efficacy is conditioned by the fact that in the retroaction system communication in its interactive aspect demonstrates not only a certain contingency, but mainly a paradoxical relation.

By giving the final outlines for the budgetary legal rule, Parliament establishes the area of activity of the executive activity of the State with regard to the contraction of expenses and, at the same time, determines the probable scenario for the composition of revenues. In the case of the annual budget law, the provision regarding the composition of the internal retroactive system, that is, the correlation between revenues and expenditures, takes on a rigid outline, of scarce mobilization to the executive branch. An example of this can be found in the Constitution of the Federative Republic of Brazil of 1988, which in its art. 167, item VI, prohibits the transposition, relocation or transfer of resources from one programming category to another, or from one agency to another, without prior legal authorization. In the same sense set forth in art. 167, item V, which prohibits the opening of additional or special credit without prior legislative authorization. These systemic operations demonstrate that there is an undeniable imperative of the budgetary plan.

Moreover, the pragmatic aspect is even more apparent in terms of expenditure. The Brazilian legal system, for example, provides for the figure of the tax budget, which is nothing more than the power of a parliamentarian to carry out amendment to the budget bill by linking part of net current revenue to the implementation of public health services, for example. In this case, it is clear that the budgetary legal rule does not constitute mere advice for the public administrator to behave in this or that way. It establishes a limit of action that must be performed by it. In their overall effectiveness, all the programs placed in the budget piece must be duly executed by the Administration according to the organic and paradoxical correlation between revenues and expenses.

Despite the pragmatic aspect of budgetary normative communication, versed in a prescription of imperative nature, this is not an absolute one. Because of this, there is talk of conditioned-bound effectiveness. In order for expenditure to be carried out in accordance with the principle of budgetary equilibrium in most Western legal systems, the golden rule of the public budget, the retroactive mechanism is based on the existence of a avoid excessive public debt to finance state spending. With this, the norm points to a prima facie, a deontic composition, establishing an obligation, but that brings an exception contained in a permissive dependent norm, which establishes an exception to the general rule: the possibility of contingency, as foreseen in art. 9, of the Brazilian Fiscal Responsibility Law. In order for the normative communication, at this point, to have its effectiveness mitigated, the public manager of any of the Powers may suspend the effectiveness of a given expense provided that it is not mandatory at the constitutional or legal level.

In this way, it is seen that in this specific point, the effectiveness of budgetary legal rule is conditioned to the possibility of its realization in the contours of the correlation between revenues and expenses in a zone of questionable equilibrium. At the same time, effectiveness is bound, since, in addition to having to have sufficient motivation for the act that determines the contingency - that is, it cannot happen in an arbitrary way - once the public authorities to re-establish their respective expenditure forecasts in proportion to the increase in revenue. Moreover, it can be said that the feedback mechanism, given the hypothetical nature of normative communication in a pragmatic sense, points to the need for eventual contingency to be given according to a diluted proportionality principle, so that it does not focus on only one or a few areas of state action, but the contingency is diluted in all folders, according to the teleological conditioning given by the autopoietic structure of the system of law.

## 5. Conclusion

By immersing the budgetary legal rule in the scope of systems theory, it is necessary to analyze it according to a communicative nature of pragmatic content. Taken from this, it was pointed out the inadequacies of the numerous theories that identify the budgetary norm now covered by a material nature, fully binding, or of a merely formal nature, that is, presenting itself as mere advice for the activity of the Public Administrator. The study carried out showed that from normative experience from the perspective of normative communication, the budgetary legal rule has a complex structure and function in the legal system, which can only be unveiled from the division of its multiple internal and external, to the extent of a second order observation.

Therefore, it was concluded that the budgetary legal rule is translated into pragmatic normative communication of a distinctive-integrative nature and conditioning-bound effectiveness, verified through the existence of multiple mechanisms of communicative feedback. This fact points to a new way of conceiving this normative structure beyond a merely orthodox and ontological vision, bringing out innumerable hidden dynamic aspects. The pretension of the work is to contribute to the academic debate, putting a point of criticism to the traditional doctrine, as well as offering to the critic of all the researchers of the social sciences.

## References

BERTALANFFY, L. (2015). **T*eoria Geral dos Sistemas:*** *fundamentos, desenvolvimento e aplicações.*Petrópolis, Vozes.

BOBBIO, N. (2010). ***Teoria geral do direito.*****São Paulo, Martins Fontes.**

COSTA GONTIJO, P. A. (2018). *Os tratados internacionais comuns e a proteção da confiança.* Belo Horizonte: Biblioteca da Universidade Federal de Minas Gerais. Availablein http://www.bibliotecadigital.ufmg.br/dspace/handle/1843/BUOS-BAMJGU

FERRAZ JR., T. S. (1974). ***Teoria da Norma Jurídica.*** Rio de Janeiro, Forense.

FERRAZ JUNIOR, T. S. (2011).*Introdução ao estudo do direito: técnica, decisão, dominação.*São Paulo, Atlas.

FONROUGE, C. M. G. (1993*). Derecho*F*inanciero.* Buenos Aires, Depalma.

FRANCO. A. L. S. (2015). *Finanças Públicas e direito financeiro.* Coimbra, Almedina.

HOBBES, T. (2002). *Leviatã.* São Paulo, Martin Claret.

KRUGMAN, P., WELLS, R. (2007). *Introdução à economia.* Rio de Janeiro, Elsevier.

LUHMANN, N. (1983). ***Sociologia do Direito I.*** Rio de Janeiro, Tempo Brasileiro.

LUHMANN, N. (1985).*Sociologia do Direito II.*Rio de Janeiro, Edições Tempo Brasileiro.

LUHMANN, N. (2005).*Confianza***.** Santiago de Chile, Instituto de Sociologia. PontíficiaUniversidad Católica de Chile, 2005.

LUHMANN, N. (2009). ***Introdução à Teoria dos Sistemas.*** Petrópolis, Vozes.

LUHMANN, N. (2016). ***O direito da sociedade.*** São Paulo, Martins Fontes.

LUHMANN, N. (2016a).*Sistemas sociais: esboço de uma teoria geral.* Petrópolis, Vozes.

MANKIW, G. (2009). *Introdução à economia.* São Paulo, Cengage Learning.

MÖLLER, K.(2015). Crítica do direito e teoria dos sistemas**.***Tempo social.*V. 27, N. 2, p. 129-152.

NEVES, Marcelo. (2009).*Transconstitucionalismo***.** São Paulo,Wmf Martins Fontes.

TORRES, R. L. (2000). *Tratado de direito constitucional financeiro e tributário, volume V: o orçamento na Constituição*. Rio de Janeiro, Renovar.

VIEHWEG, T. (2008). *Tópica e Jurispruência.* Porto Alegre, Sérgio Antônio Fabris Editores.