

External control and institutional drift in the First Brazilian Republic

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This research deals with the development of the federal institutions of external control during the First Brazilian Republic. This subject is scarcely explored in the literature. In general, it is addressed as a background in studies focusing on the recent history of the Federal Court of Accounts, characterized by the emergence of the New Republic (started in 1985). Such studies suggest a historical pattern in the development of federal institutions of external control, characterized by the alternation between periods of expansion and retraction of their attributions. To advance the knowledge of this historical pattern and contribute to expanding the literature on these institutions, we need a more in-depth look at the period of they were established, i.e., the First Brazilian Republic. This study suggests that the development of federal external control institutions in the First Brazilian Republic was characterized by the legal expansion of attributions from 1890 to 1892, followed by the practical abdication until 1930 by the institutional drift of the responsibility of judging the annual accounts of the government. This is a historical institutionalist study based on the analysis of primary sources.

Keywords: external control institutions; First Brazilian Republic (1889-1930); institutional drift; public accounts; federal court of accounts.

Controle externo e *drift* institucional na Primeira República

Esta pesquisa trata do desenvolvimento das instituições federais de controle externo durante a Primeira República brasileira. É um tema pouco visitado pela bibliografia, em geral abordado em retrospectivas que compõem estudos cujos focos estão na história recente do Tribunal de Contas da União (TCU), marcada pelo advento da Nova República (1985-). Tais estudos sugerem um padrão histórico no desenvolvimento das instituições federais de controle externo, caracterizado pela alternância entre períodos de expansão e de retração de suas atribuições. O conhecimento acerca desse padrão histórico de desenvolvimento institucional, para avançar, carece do aprofundamento das pesquisas sobre o período no qual se estabeleceram as bases de sua construção: a Primeira República. Este estudo pretende ser uma contribuição à superação dessa lacuna. Ele sustenta que o desenvolvimento das instituições federais de controle externo no período em questão foi caracterizado pela expansão legal de atribuições, de 1890 a 1892, seguida pela abdicação prática dali até 1930, por *drift* institucional, da responsabilidade de julgar as contas anuais de governo. O estudo é institucionalista histórico e foi construído com base na análise de fontes primárias.

Palavras-chave: instituições de controle externo; primeira república (1889-1930); *drift* institucional; contas públicas; tribunal de contas da união.

Control externo y *drift* institucional en la Primera República brasileña

Esta investigación aborda el desarrollo de las instituciones federales de control externo durante la Primera República brasileña. Es un tema es poco visitado por la bibliografía, que, en general, lo aborda en retrospectivas presentes en estudios centrados en la historia reciente del Tribunal de Cuentas de la Unión, a menudo demarcada por el advenimiento de la Nueva República (1985-actualidad). Los estudios sugieren la existencia de un patrón histórico de desarrollo de las instituciones federales de control externo, caracterizado por la alternancia entre períodos de expansión y de retracción de sus atribuciones. Para avanzar en el conocimiento acerca de este patrón histórico es necesario profundizar las investigaciones sobre el momento en el cual se establecieron las bases de su construcción, la Primera República. Este estudio pretende ser una contribución a la superación de esa laguna. Sostiene que el desarrollo de las instituciones federales de control externo en el período en cuestión se caracterizó por la expansión legal de atribuciones de 1890 a 1892, seguida de la abdicação práctica desde entonces hasta 1930, por *drift* institucional, de la responsabilidad de juzgar las cuentas anuales del gobierno. El estudio es institucionalista histórico y se compuso a partir del análisis de fuentes primarias.

Palabras clave: instituciones de control externo; primera república brasileña (1889-1930); *drift* institucional; cuentas públicas; tribunal de cuentas de la unión.

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1. INTRODUCTION

Institutions of external control in Brazil are the result of a republican construction. The Federal Court of Accounts (TCU) was created in 1890, and the first State Court of Accounts, in Piauí, dates from 1893. From the First (1889-1930) to the New Republic (1985-), the trajectory of external control in the country was marked by injunctions of authoritarianism, which weakened it, and by the expansions of attributions in democratic openings (Cotias & Silva, 1999). Since the advent of the 1988 Brazilian Constitution, the Courts of Accounts have experienced a process of incremental institutional development, where the innovations are propelled by exogenous factors, particularly the recovery of power by the Legislature, which made the interference of the Executive Power recede over such control bodies (Loureiro, Teixeira, & Moraes, 2009).

Understanding the historical roots of the pendular movement of expansion and reflux that characterizes the development of federal institutions of external control is the main issue of this study. The text argues that it is a long-term pattern, forged during the First Republic, and that its initial purpose was to expand the influence of the Executive Power, due to the prevalence of a conservative interpretation of the liberal dispositions of the 1891 Constitution (Lynch, 2011).

This paper proposes that the development process of federal institutions of external control during the First Republic occurred by drift, and can be understood in three phases, reflected in the sections that reveal the results of this research. The first phase, from 1890 to 1892, was marked by the construction of liberal mechanisms of financial checks and balances, and by an expansion of legal attributions of the TCU. The following, between the oligarchic stabilization of the Republic and the 1930 Revolution, were characterized by the preponderance of the Executive Power over the Legislative Power, and the sterilization of the Federal Court of Accounts regarding the issuance of prior opinions on the government accounts, with the consequent non-compliance with the constitutional provisions that determined the judgment, annually, of the accounts for the financial years.

It is a historical study, conducted according to evidence collected from primary sources and interpreted in the light of concepts of historical institutionalism, particularly those of institution and institutional development by drift.

2. ISSUE STATUS AND PROPOSED APPROACH

Studies on external control in Brazilian history favor the recent past, characterized by the advent of the New Republic and the 1988 Constitution, whether performed in the field of Law (Costa, 2006; Pozzo, 2010; Rosilho, 2016; Scliar, 2007), or in neo-institutional approaches in the context of political science (Ferreira, 2013; Loureiro et al., 2009; Speck, 2000).

Works related to external control during the First Republic are scarce. In general, they are included in texts that cover longer periods and describe the institutional developments without approaching the explanations of their nature and scope (Bugarin, 2000; Buzaid, 1966; Silva, 1999). There are also studies on specific events, such as Serzedello Corrêa's action to promote the installation of the TCU (Lira, 1959), and books by Ministers of the Federal Court of Accounts about the organization's functioning, which include short retrospectives (Rosa, 1943; Valladão, 1911). A history that contemplates aspects of the institutional development of the federal external control activity during the First Republic can

be found in Speck (2000). There, the flashback between 1891 and 1967 has the purpose of introducing the core of the study: the action of the TCU after 1988.

There is, thus, a gap concerning works specifically dedicated to the institutional development of federal external control in the First Republic. This historical research intends to contribute to the expansion of knowledge regarding the subject, which can be useful to the fields of political science and history, by deepening the understanding of the accumulated history that led to the conformation of federal institutions of external control. It contains a historical institutionalist approach.

According to North (2002), the institutions are the rules of the game in a society, created to influence human interactions. They can be formal, such as norms and regulations, and informal, such as conventions and codes of conduct. According to Hall and Taylor (2003), works in the field of historical institutionalism consider institutions in terms of procedures, protocols, norms, and conventions inseparable from the structure of political communities and economy. In this text, the federal institutions of external control are considered in their formal, legally positive, and informal dimensions, particularly the conduct that turned the constitutional commandment that determined the judgment of the government annual accounts into a dead letter.

Pierson (2004) defines institutional development in terms of gradual processes and transformations, that occur in more extended temporalities, include individual actions, and go beyond them. It is not necessarily a secular *longue durée*, but a theoretical reading that considers institutional trajectories strongly marked by path dependence, in a temporal register close to what Braudel (2007) identified as of medium duration, counted in decades. The concept of path dependence argues that certain choices, made in specific historical contexts, end up connecting the development trajectory of institutions. The irreversibility of the paths taken is not assumed, only a considerable inertial effect, which makes changes in direction difficult. Developed in the context of historical institutionalism by authors, such as Arthur (1994), David (1985), and Pierson (2000), the concept is widely disseminated as a tool to understand institutional development processes.

Streeck and Thelen (2005) suggest five ways according to which institutions can be transformed: displacement, layering, drift, conversion, and exhaustion. The first way refers to the emergence of new institutional models, that question old organizations and practices; the second way involves the existence of parallel structures, new and old, in a certain institutional arrangement; the fourth way occurs when an institution has its purposes redirected; and the fifth way is related to the gradual collapse of institutions. This study, however, focuses on the third way.

Drift occurs when there is a mismatch between the formal attributes of institutions and the reality to which they apply, as well as when gaps in valid rules lead to a process of abdication of responsibility (Streeck & Thelen, 2005). The idea of drift is related to the interpretation proposed here, since this text argues that regulatory gaps were defined and kept exogenously to the superior supervision institution of the Union, in the context of hierarchical relationships maintained between the federal Executive and Legislative Powers during the First Republic.

The historical study was conducted with evidence collected from primary sources, such as the annals of the Chamber of Deputies and the Federal Senate, historical newspapers, the annual messages of the Presidents of the Republic to the Congress, and the reports of the Finance Ministers. A comparison was made between the proposals debated in the Parliament about the conformation of

institutions of external control, and the proposals about the norms effectively affirmed. This method of work allowed to glimpse the historical movement of the institutional drift construction, so that the resulting narrative revealed the different forces and political proposals in action.

The narrative was constructed through a strategy that can be defined as an analytically structured history (Rowlinson, Hassard, & Decker, 2014). Thus, an analytical construct, the idea of institutional development by drift, was used to assist in the interpretation of the collected sources. The use of the referenced historical and theoretical bibliography complemented the interpretative work.

3. RESULTS

3.1 The tide of generous ideas (1890-1892)

A tide of generous ideas was how Rui Barbosa characterized the two years following the Proclamation of the Republic (O Tribunal de Contas, 1900). During this period, the Bahian jurisconsult played a central role in defining a formally liberal institutional framework for federal external control. It innovated in two ways.

First, in the state macrostructure of the North American Union, which inspired the Brazilian republicanism, there were no federal institutions of external control and audits. The Government Accountability Office (GAO) was created in 1921 and followed the legislative audit office model (Posner & Shahan, 2014), thus different from the Napoleonic-inspired court system implemented in Brazil.

Second, the preference for the court model did not mean the adherence to the administrative control, as practiced in France. There, a system of administrative jurisdiction separated from the ordinary justice and subsequent external control was implemented. In Brazil, the Court of Accounts was established as part of a single-jurisdictional system, with prior and subsequent control powers. This was innovative in relation to the French reference and the past of imperial discussions. The Courts of Accounts projects by the liberal Manuel Alves Branco, presented in 1837 (Câmara dos Deputados, 1887) and 1845 (Barbosa, 1999), stipulated only the subsequent control. At the end of the Empire, the Conservative Minister Francisco Belisário Soares de Sousa presented the prior control model as an object of controversy among scholars from the countries that adopted it – Italy, Belgium, and the Netherlands (Souza, 1887). On the other hand, João Alfredo Correia de Oliveira, also Conservative, clearly opposed the belgo-italian-inspired prior examination, “not only because of the conflicts that it generates between the Government and the Court, but also due to the greater number of employees that it requires” (Oliveira, 1889, p. 25).

Rui Barbosa, with the creation of the Court of Accounts through the Decree nº 966-A, dated November 7, 1890, contemplated the prior and subsequent controls in a latitude of intrusion in the administration that the imperial, liberal, and conservative political leaders had not deemed reasonable. According to the Bahian jurisconsult, the Republic should put an end to the regime of irresponsibility that would have marked the Empire, and for this purpose, it should focus on the example of the country which, from his point of view, performed the best control practices: Italy (Barbosa, 1999). Nevertheless, unlike the Italian model, whose control surpassed the limits of financial activities, the Court of Accounts was restricted to them by the decree of its creation. In addition, a prior control mitigation mechanism was introduced. Acts related to expenditure and revenues previously challenged

by the Court of Accounts could be taken forward, should the Executive Power deemed them essential. They would be registered under reservation by the Court.

The construction of the initial institutional foundation of external control in the Republic, however, was not restricted to Rui Barbosa's action. The Court of Accounts was not even included in the draft constitution sent by Deodoro da Fonseca to the National Congress, whose text had been revised by Rui Barbosa. The inclusion of the Court in the constitutional text resulted from the approval of an amendment presented by the Committee of Twenty-one, a collegiate body responsible for giving advice on the draft Constitution.

By presenting the amendment, the committee asserted that the creation of the Court of Accounts aimed to make the supervision of federal expenditure come true, "filling, then, one of the most distinctive gaps of our financial organization" (Senado Federal, 1924, p. 360). Moreover, it was stated that the country would follow the example of educated nations with the measure, where courts of that nature existed in conditions of complete independence. The amendment resulted in article 89 of the 1891 Constitution, according to which "a Court of Accounts is established to settle the accounts of revenue and expenditure, and verify their legality, before they are rendered to the Congress" (Constituição da República dos Estados Unidos do Brasil, de 24 de fevereiro de 1891).

This same article constitutionalized, then, the subsequent control, as a subsidy to the parliamentary action. The text of Decree n° 996-a, dated November 7, 1890, however, stipulated the prior control. This led to questions about the legitimacy of the court preventive action, once it was installed.

Its installation occurred only in 1892, after the regulation issue published by Decree n° 1.166, dated November 17, 1892 (Decreto n° 1.166, de 17 de dezembro de 1892). The norm was sponsored by the Finance Minister Serzedello Corrêa. Corrêa, a nationalist and industrialist (Luz, 1978) from Pará, was enthusiastic about the external control institutional framework created under the liberal spirit of the 1891 Constitution. His action deepened the polemic surrounding the prior control by the Court of Accounts. The decree signed by him, on the one hand, made his right to deny registration of acts of expenditure and revenues deemed irregular, without any provision for registration under reservation. On the other hand, it did not stipulate prior opinions on the government annual accounts.

The absolute prior control provoked the wrath of Floriano Peixoto, who had signed the decree for his establishment, apparently, without understanding its scope. According to him, the Court of Accounts obstructed the administration. The president even proposed regulations that, if edited and put into practice, would nullify it (O Sr. Ex-Ministro da Fazenda, 1893). Corrêa refused to sign them and resigned from the Ministry of Finance (Lira, 1959). Floriano then requested the Congress for measures to get rid of what he called embarrassments imposed on the administration (Peixoto, 1893).

The Congress passed an organic bill of the TCU which established the possibility for the Executive Power to proceed with the financial activities previously challenged by the Court of Accounts, but the faculty faced two limits. First, in the budget availability, that, if nonexistent, would mean an absolute obstacle to an expense recording. Second, regarding legal compliance, that is, the lack of authorization by budget law would completely prevent the continuity of financial activities. Dissatisfied with the project approved in 1893, Floriano vetoed it, stating that rigorous controls were not adequate for the public accounting system, "full of gaps and imperfections and that barely accommodate simple parliamentary supervision" (Peixoto, 1894, p. 16).

The tide of generous ideas resulted in the conformation of liberal institutions of external control for the young Republic, which adapted the French Court of Accounts model to a North American-

inspired constitutional body and had a more ambitious scope than the projects discussed in the Empire. As of 1892, however, the tide began to recede.

Instead of the nullification of control mechanisms intended by Floriano, the development of federal institutions of external control was conducted by sophisticated drift mechanisms. Its purpose, as the next subsection describes, was to shape these institutions into what Lessa (2015) called spontaneous morphology of power, the *realpolitik* of the oligarchies that stabilized the Republic. It can be asserted that it was a specific manifestation in the context of external control of the general movement of conservative interpretation concerning the constitutional provisions identified by Lynch (2011).

3.2 The bases of the conservative drift (1895-1902)

The institutional foundation of external control established between 1890 and 1892, in the letter of the law, equipped the New Republic with a mechanism of checks and balances typical of liberal republics. Nonetheless, without the Court of Accounts having even once supported the Legislative Power for the setting of annual government accounts, as stipulated in articles 34, 1, and 89 of the 1891 Constitution, there was a trajectory redefinition of institutions of external control. The review action was rapid enough to prevent path dependence mechanisms from operating in time. Without being put in practice, the dispositions referring to the judgment of the government annual accounts could not take root or create the type of inertial effect that would hinder trajectory modifications. Therefore, the bases for redirecting the institutional development of the federal external control were consolidated between 1895 and 1902, through the reform of a formal institution and the design of an informal one.

From a formal point of view, there was a reform of the decree that had organized the Court of Accounts in 1892. Rodrigues Alves, the first Finance Minister under President Prudente de Moraes' administration, had participated, as a senator, in the deliberations of the court's organic bill that was vetoed by Floriano in 1893 (Senado Federal, 1894). In 1895, he supported a new proposition, formulated by the Senate Finance Committee (Senado Federal, 1895a).

The project expected the reinstatement of the possibility of registration under reservation for financial activities previously challenged by the Court of Accounts. However, differently from the 1893 project, no objective limits were established for the use of this faculty by the Executive Power. In addition, expenditures with the payment of Treasury bills, debt instruments, and interest due; credit operations authorized by law, when a reserve was needed for their success; and also, small and expedient expenses of the offices were excluded from the prior supervision of the Court of Accounts (Senado Federal, 1895b). Nothing similar was found in the bill passed by the Senate in 1893.

Minister Rodrigues Alves clearly expressed his preference for the 1895 project, "in which there is a visibly predominant idea of opening up to executive action, in the enactment of expenditure, a greater space than the standing rules of Decree n° 1.166, dated December 17, 1892, allows" (Alves, 1896, p. 176). After being approved, it resulted in Decree n° 392, dated October 8, 1896 (Decreto n° 392, de 8 de outubro de 1896), regulated by Decree n° 2.409, dated December 23, 1896 (Decreto n° 2.409, de 23 de dezembro de 1896). The legal recovery of executive action latitude regarding the execution of budgets was the first basis for external control redefinition in the early republican years. Moreover, the silence on the regulation of the issuance process regarding prior opinions on the government accounts was maintained for parliamentary judgment.

The other redefinition basis was the state policy planned by Campos Sales (1983). This complex policy consisted in modifying formal institutions, such as the reform of Standing Rules of the Chamber of Deputies (Backes, 2006), and the development of an informal one, an unwritten pact according to which, in practice, the Legislative Power was subordinated to the Executive Power at the federal level, and political disputes were focused on the states (Lessa, 2015), in a coronelistic (Leal, 2012; Queiroz, 2006) and violent (Lynch, 2011) way. Described by historiography (Cardoso, 2006; Carone, 1972) as a vector of oligarchic and conservative stabilization of the republican regime, the state policy made an impact throughout the country's political history. According to Campos Sales' definition, in it, "the Power that, by the nature of its prerogatives, is in a position to clarify and direct is the Executive Power" (Presidência da República, 1897, p. 1). Hence the need for a broad and solid parliamentary majority, "preventing rivalries and conflicts incompatible with the harmonic and salutary functioning of a well-established government" (Presidência da República, 1897, p. 1). According to Sales, a well-established government should take place "out of the sight of political partisanship" (Sales, 1983, p. 107). This conceptualization gave the federal Legislative Power the role of directed, of dehydrated space of political opposition.

As, under the terms of its regulations, the Court of Accounts had all its members appointed by the president of the Republic and scrutinized by a Parliament dominated by the Executive Power, the corollary of state policy for external control was the sterilization of dispositions referring to the annual judgment of government accounts present in articles 34, 1, and 89 of the 1891 Constitution. The Court did not issue prior opinions on the accounts, and the Congress did not assess them in the light of technical subsidies. In response to the liberal diastole which characterized the conformation of federal institutions of external control between 1890 and 1892, a systole was shaped, ruled by the prevalence of the Executive Power as of 1892.

The sterilization was renewed by several expedients during the First Republic, so that the main function of the Court of Accounts for the formal balance between the powers of the Republic was not concretely exercised. This text argues that the main expedient used to obtain this result was the management of regulatory gaps and conflicts between legal provisions. From them, the Legislative Power and the Court of Accounts ended up abdicating their functions in the process of setting of annual government accounts, in a process of institutional drift. According to Streeck and Thelen (2005), "drift can also be caused through gaps in the rules, allowing actors to abdicate their previous responsibilities" (Streeck & Thelen, 2005, p. 25, our translation).

As the next subsection shows, with the bases planned between 1895 and 1902, the drift process characterized the development of institutions of external control until the end of the First Republic.

3.3 The conservative drift through gaps (1902-1930)

The first gap explored to make the judgment of government accounts unviable was the lack of codification of public accounting standards until 1922 and, after that, the differences in interpretation between the Accounting Code and its regulation. The second gap was the absence of clarity regarding the annual judgment process of the government accounts.

Floriano Peixoto had already used the argument of the disorganization of public accounting rules to refuse to accept a strict external control in 1893. Rodrigues Alves brought up the problem again in 1896, stating that "if a public accounting code is not organized, the current regime prevails: it is convenient to limit the impeditive or preventive action of the Court of Accounts" (Alves, 1896,

pp. 181-182). The chosen path was evident. The accounting standards codification was not suggested; releasing the government from the preventive action of the Court was preferred. This gap persisted until the years 1920, even with the proposal of an Accounting Code project in December 1903.

The project was presented by Leopoldo de Bulhões, Finance Minister under President Rodrigues Alves' administration (1902-1906). He wanted the codification of public accounting essentially as a subsidy to the rational fiscal management (Bulhões, 1903):

The accounting code, whose bases you will find below, consolidates all dispositions related to the formation, execution, and settlement of the budget, expenditure supervision, setting of accounts of administrators and those in charge, and develops the principle stipulated in art. 3, §1, of Law dated October 30, 1891, which tasks the Ministry of Finance with directing and standardizing the general accounting service of the Union, exercising supervision over all departments, dependent or not of the same Ministry, that are responsible for the book-keeping of revenue or expenditure (Bulhões, 1903, p. VI).

Emphasis was placed on the Ministry of Finance role as director and supervisor of the divisions of revenues and expenditures of the Union. The standardization of accounting rules would work so that the Executive Power had secure bases to search budgetary balance and good financial administration, since “the provisional balance sheets we have, organized with very incomplete elements, do not inspire confidence” (Bulhões, 1903, p. III).

The emphasis on the executive aspects of the project did not exclude elements of external control, after all, the editor of the project draft was the then president of the TCU, Minister Dídimo Agapito da Veiga (*Vamos ter o Código de Contabilidade*, 1915). The project had 788 articles, organized in two titles, one on general accounting, and the other on the classification of accounting (Câmara dos Deputados, 1904). The first title focused on the centralization of accounting at the Treasury, and the standardization of procedures. The second title was divided into five chapters. The last of them referred to judicial accounting, understood as that related to the judgment of the government financial activities with the support of the Court of Accounts. In it, it was stipulated that the Court of Accounts, in a succinct exposition, should, annually, show the result of the government accounts examination to Congress, concluding whether or not they are regular. It was also planned the organization of the court with state delegations and an instructive technical body. Leopoldo de Bulhões (1905), without success, insisted on the urgency of deliberation on the code project. He was only enacted in January 1922.

The matter of issuing a prior opinion had not been addressed in the decree that instituted the Court of Accounts, let alone in its regulations of 1892 and 1896, and continued following the legal channels within the scope of the Accounting Code project. Consequently, the Committee of Setting of Accounts of the Chamber of Deputies remained unsupported and inert to carry out the judgment of the government annual accounts. With the state policy running smoothly, the Parliament did not move to change the situation. In 1909, however, there was a crack in this policy, and the first fierce electoral dispute of the First Republic occurred. In this context, deputy Rodolpho Câmara proposed project nº 43, of 1909, to regulate the setting of accounts by the Legislative Power.

Alfredo Valladão (1911), Minister of the TCU between 1915 and 1935, realized that the Congress had not even once set the accounts for the financial year until 1910. Rodolpho Câmara's project

intended to overcome this situation, by making the Court of Accounts responsible for organizing the annual rendering of accounts by the Executive Power and sending it to the Committee of Setting of Accounts by May 15 of year (Câmara dos Deputados, 1909). Thus, it was intended to ensure the independence of the Legislative Power judgment. Nevertheless, the Court of Accounts was not expected to manifest itself on the regularity or otherwise of the accounts, which would be reserved for the parliamentary collegiate body.

The proposition received a clean bill authored by the deputy from Minas Gerais, Antônio Carlos Ribeiro de Andrada, in 1911, when the parliamentary majority under President Hermes da Fonseca's administration had stabilized. Ruling and aligned with the state policy, the parliamentarian from Minas Gerais proposed that the President of the Republic, "supreme manager of the public fortune" (Câmara dos Deputados, 1914a, p. 407), be responsible for organizing the accounts and sending them to the Parliament, which would be done by through the National Treasury, according to accounting procedures stipulated in Law nº 2.083, dated November 12, 1953 (Lei nº 2.083, de 12 de novembro de 1953), that reformed the National Treasury in July 1909. The decree finally approved, nº 2.511, dated December 20, 1911 (Decreto nº 2.511, de 20 de dezembro de 1911), established his point of view.

Antônio Carlos' clean bill contributed to formatting the institutional drift of external control. By tasking the National Treasury with preparing the accounts to be judged by the Parliament, in practice, it sanctioned the custom of not carrying out this work, as Alfredo Valladão had noted. Two years after the decree was passed, the deputy from Minas Gerais expressed his dismay (Câmara dos Deputados, 1914c):

As for the Treasury, the lack of personnel has always been used as an excuse for the delay of certain services, some of incontestable relevance. Among these, the lack of organization of balance sheets has caused the deception of one of the most important attributions of the Congress — the setting of accounts of financial management. At the moment, the information is that the definite balance sheet is ready for 1907 — six years later! (Câmara dos Deputados, 1914c, p. 264).

The issue of judging the government annual accounts returned to parliamentary discussion in 1917. At the session of the Chamber of Deputies on September 17, the Special Committee, constituted with the purpose of setting down in writing an opinion on the Accounting Code, decided to highlight part V of the project, which provided for the Court of Accounts, in order to grant its own normative act.

The decision was based on the opinion of the Minister of the Supreme Federal Court (STF), Augusto Olympio Viveiros de Castro, who considered the reform of the Court of Accounts urgent, yet inadequate within the scope of the Accounting Code project. The urgency arose from some confirmations made by the Minister. The most impactful one recalled that "the Committee of Setting of Accounts of the Chamber of Deputies has not yet approved a single veto by the Court of Accounts" (Castro, 1914, p. 754). The report of the practical sterilization of the Court of Accounts gives the dimension of the ongoing institutional drift. The Republic was approaching thirty years without having the mechanisms of financial checks and balances effectively working, due to the lack of parliamentary will, and the lack of maintenance of strategic gaps. The opinion of the Special Committee presented the matter in a radical way: "Either the institute of the Court of Accounts is remodeled in order to definitely guarantee the effectiveness of its action, or it is suppressed, once and for all, as a costly and useless apparatus" (Câmara dos Deputados, 1918, p. 499).

The radical intention, however, was frustrated. Paragraph 5 of article 43 of the clean bill contained in the opinion of the Special Committee established that it would be up to the Court of Accounts to formulate the government annual accounts, in case the Executive Power failed to organize and send them to the Congress by June 15. For this purpose, the officers of the Court of Accounts could request information from the administration bodies, under penalty of criminal liability for those who refused to provide it. In the process, this disposition was removed from the text. This event, as well as that of 1911, illustrates the encounter between the lack of the Parliament willingness to supervise, and the maintenance of gaps that made the judgment of the Republic annual accounts unviable.

In the end, the resulting Decree nº 13.247, dated October 23, 1918 (Decreto nº 13.247, de 23 de outubro de 1918), granted the Executive Power the exclusivity to organize the annual rendering of accounts, without the Court of Accounts being able to act in case the government failed to comply with the obligation. The action of the Court was restricted to the opinion on the regularity and accuracy of the accounts. The norm contemplated the creation of state delegations, an organization advance proposed since 1893, but the gap that hindered the complete realization of the dispositions of articles 34, 1, and 89 of the 1891 Constitution, concerning the parliamentary judgment of the Executive Power accounts, was strategically maintained. These aspects of the 1918 reform indicate the direction of the ongoing institutional development: the gradual organization of the Court of Accounts services, but also the maintenance of regulatory gaps that were responsible for sterilizing the supervisory body regarding the government annual accounts.

The rest of the 1903 Accounting Code project, after amendments, resulted in Decree nº 4.536, dated January 28, 1922 (Decreto nº 4.536, de 28 de janeiro de 1922): the Accounting Code. In it, article 20 finally authorized the Court of Accounts to organize the rendering of accounts referring to the previous year, in case the Executive Power failed to do it. Nonetheless, this faculty was granted at the moment when the institutional guarantee was given that it would not be necessary to use it. It was the creation of the Central Accounting Office of the Republic, a federal accounting central body responsible for organizing and sending the financial balance sheets of the Republic to the Parliament, an obligation that, until then, had not been fulfilled in time by the Treasury Accounting Board.

The Central Accounting Office started to organize the annual rendering of government accounts periodically. As the general accountant of the Republic, Francisco D'Áuria, noted in 1927, the accounts referring to the years 1923 to 1926 had been organized within the legal deadline (Ministério da Fazenda, 1927). However, they continued without being settled and without receiving prior opinions from the TCU. This made it unviable for the Parliament to judge them. The justification given by Agenor Lafayette de Roure (1929), Minister of the TCU, resided in divergences between dispositions of the Accounting Code and its regulation, conveyed by Decree nº 15.783, dated November 8, 1922 (Decreto nº 15.783, de 8 de novembro de 1922).

Articles 110 to 114 of the Accounting Code regulation determined that the final balance sheets of revenues and expenditures should contain a synthetic and an analytical part. The first part should be sent to the National Congress by November 30 of the year following the fiscal year. The second part, with expenditure breakdowns, should be sent to the Court of Accounts within six months after the presentation of the accounts to the Parliament. Therefore, the Accounting Office could send the separated tables to the external control body by May 31 of the second year after the budgetary

execution. Nevertheless, this was the limit for the Court of Accounts to issue an opinion on the year under analysis and sent it to the Congress for assessment. According to Agenor Lafayette de Roure (1929), the lack of analytical information made the issuance of prior opinions unviable,

hence there is no Court of Accounts until today, as of 1922, in compliance with article 20 of the Code; in the 1st part, because it could not give advice on the accounts that were not sent to it; in the 2nd, because it did not have the elements to organize the accounts instead of supervising them; and even if it did, it would be embroiled to exercise such an original suppletive attribution (Roure, 1929, p. 7).

In his speech, a choice can be noticed. In the absence of information deemed indispensable for issuing a prior opinion on the government accounts, the Court of Accounts chose not to organize them suppletively, as allowed by the Accounting Code, alleging a political embroilment. If the Parliament, in the spirit of the state policy, kept the gaps and legal conflicts that made the judgment of government annual accounts unviable based on prior opinions, the Court of Accounts accommodated itself to the frame. Both did not fulfill their main objective regarding the Republic financial inspections. That was the meaning of institutional development of external control in the First Republic, a drift through gaps which resulted in the abdication of legal obligations in practice.

During the First Republic, there was not even a single judgment of the government annual accounts based on prior opinions of the TCU. The 1930 Revolution was responsible for proscribing from the law what was already nonexistent in practice, and, consequently, the institutions of external control were thrown from a drift towards a process of near exhaustion.

4. CONCLUSION

The evidence presented by this research allows to affirm that the movement of expansion – reflux that singularizes the history of external control in the Republic – was born with the creation of the TCU.

The tide of generous ideas identified by Rui Barbosa lasted exiguous two years, from 1890 to 1892. It resulted in a typically liberal institutional foundation for external control, with the Court of Accounts supporting the parliamentary control of public accounts. Its scope was broader than that established in imperial discussions about the financial supervision and adapted the French Court of Accounts system to a constitutional structure inspired by the North American Republic.

The legal dispositions forged between 1890 and 1892, however, were not concretely put in practice. There was no time to forge an institutional development trajectory connected with its application. Its development was redirected by a conservative interpretation of the Republic powers separation, which used a strategy of drift through gaps and normative conflicts.

The conservative stabilization of the First Republic established the Legislative Power and Court of Accounts in the framework of the state policy, submitting them, in practice, to the Executive Power. It appointed the members of the Court of Accounts and led the flexibilization of prior controls to their financial activities. Although the organization of the Court services has advanced, strategic normative gaps were maintained by the Parliament and exploited by the Executive Power, in order to turn the dispositions of financial checks and balances stipulated in articles 34, 1, and 89 of the 1891 Constitution into a dead letter. Consequently, the Congress and external control body abdicated

their roles as for the assessment of the government annual accounts. There were no prior opinions from the Court of Accounts or parliamentary judgments based on the support of the control body.

From the expansion of legal attributions in the early years of the Republic to the subsequent conservative drift, the first step of what can be defined as a historical development pattern of the federal institutions of external control in Brazil was established, characterized by the alternation between diastoles of the liberal spirit of checks and balances, and the emptying systoles, under pressure from the Executive Power.

The expansion of knowledge about this pendular pattern of institutional development requires the conduction of investigations into the legal expansion of the Courts of Accounts attributions in the moments of constitutionalization of the country, such as in 1934 and 1946, and the supervening processes of political closure, with the consequent intensification of the Executive Power intrusion in the functioning of institutions of external control. Further investigations may help to understand the current challenges referring to the composition way and functioning of Brazilian Courts of Accounts.

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