Surveillance and Control: Legislative Power in Argentina and Brazil

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"La société a le droit de demander
compte à tout agent public de son administration"
(*Déclaration des droits de l'homme et du citoyen du 26 août 1789*)

ABSTRACT

The more frequent criticisms on the operation of the new South American democracies concern the lack of symmetry in the relations between powers, especially the strong protagonism of the Executive power in the process of elaboration of laws. Although well grounded, such criticisms are based on an idealized vision of the Legislative branch's role. Along the XXth century, the legislative activity became a concurrent activity of the two powers. The same does not apply to the activities of surveillance and control, which still today are specific tasks of the Legislative and involve several auxiliary institutions, as the courts of accounts and audit offices. In this sense, this article intends to analyze comparatively the role of Brazilian and Argentinean Legislative branches apropos the rendering of accounts of the budgetary exercise. The emphasis here will fall on the new format of the institutions of control and their effective performance in both countries.

Key-words: Accountability; External Control; Legislative Power; Brazil; Argentina

Introduction

The 1974 Carnation Revolution, in Portugal, represented a mark in the process of change known as the third wave of democratization. From the 1980's and 1990's onwards, several countries, mainly in South America and in Eastern Europe, have "transited" from authoritarian rule to democratic regimes. The institutional changes have been reflected in the constitutionalizationalization of new institutions of social and political conviviality, among which outstand the individual rights and guarantees defining citizenship, and the rules of production, distribution, limitation and control of political power. One of the consequences of this constitutional revival has been its inclusion in contemporary social sciences research agenda.

The lack of a constitutional tradition in most of these societies is provoking, however, typical problems of constitutional implantation, as disharmonies between legal and real constitution; constitutional changes brought into effect by actors who are not supported by the respective constituent power; disobedience to the letter of the constitution; and, above all, the threat to, or the breach of, constitutional pacts.

A common characteristic to most analyses of South-American countries' institutional performance is the prominence of the Executive over the Legislative and the Judiciary, and, especially, over the rest of the agencies of control. The debate on these questions is giving

rise to a repertory of studies on South-American institutions, with emphasis on Executive-Legislative relations. In what refers to the Legislative power, however, the studies are being rather concentrated on "legislative activities", i.e., on activities linked to the production of laws, than on those related to the control and monitoring of the government Executive branch.[1] Assuming the institutions' functioning as the best indicator of democratic process consolidation, the present study intends to concentrate the analysis on the new institutions of external control in Brazil and Argentina. I shall discuss initially some ideas on the concept of accountability, which, although recently forged, stems from political theory strongest traditions; then, I intend to analyze the institutional changes related to the external control which have been introduced in the new constitutional orders of Brazil, at the final of the 1980's, and Argentina, at the beginning of the decade of 1990; and, finally, to evaluate the performance of these new institutions.

Accountability: The Different Meanings and Extents of the Concept

The idea of establishing controls and limits to sovereign power is a cornerstone of the modern democratic state. Locke sees the sovereign as the supreme executor of the law, but as someone who "looses the right to obedience" if violating the law (Locke, 1960:413). Montesquieu constructs a sophisticated mechanism of checks and balances, within the tradition of the mixed constitution conception, in which the King, the Upper House and the Lower House, representing distinct social sectors, establish reciprocal controls (Montesquieu, 1951:396-407). The true innovators of the modern system of controls are, however, the American federalists, in establishing horizontal and vertical mechanisms (Madison *et alii*, 1987)[2] later incorporated to the American Constitution, which, according to S. E. Finer, was responsible for "six innovations in the art of government": the deliberate formulation of a new institutional design through a popular convention; the written constitution; the inclusion of a declaration of rights into the body of the constitution; the assurance of legality, through judicial review over member-states and, later, over the Union; the horizontal division of powers; and the vertical division of powers between the Union and the federate states (Finer, 1999:1.501).

[1] The works of Pessanha (1997), O'Donnell (1994), Anastasia (1999), Specker (2000), Figueiredo (2001), Lemos (2006), and Melo (2006) are examples of studies on the activities of control and monitoring of the Executive, as well as on the main institutions responsible for such activities.

[2] See especially the Federalist n. 51, *idem* p. 349.

The application of these principles originated some devices or mechanisms for the first time observed in a strictly republican order, such as the bicameralism, through which the two legislative houses control each other; the presidential veto, an instrument allowing for the control by the executive of the legislative propositions; the appreciation of the veto, which potentially permits the legislative chambers to override the presidential veto. Interpreting the *leitmotiv* of the American institutions, Dahl establishes a direct relationship between absence of control and tyranny, claiming that: "in the absence of external controls, any given individual or group of individuals will tyrannize the others" (Dahl, 1989:14).

The conception of external control motivated the whole liberal constitutionalism of the 19th and 20th centuries, emphasized by Karl Loewenstein in his well known Theory of Constitution, for whom "to limit political power means limiting the holders of power" (Loewenstein, 1982:29). The controlling institutions may function within a state organ – "internal or intra-organic control" – or between different holders of power – "external or inter-organic control" (*Idem* 39-40) –, therefore, "exerted by an organ strange to the act practiced" and, as Meireles puts it, originally understood as of political character and with the objective of "verifying the probity of the administration's acts; the regularity of public expenditures, the use of public property, values and money; and the faithful budgetary execution" (Meireles, 1986:569).

The ideas inaugurated by modern constitutionalism and later included in the 1789 *Déclaration des Droits de L'Homme et du Citoyen*, as quoted in this paper's epigraph, became, therefore, the fundamental trait of modern representative democracies: the control of governors by the governed. All those occupying public offices or performing public functions shall be on the reach of popular control.

Contemporary political science has been developing the studies on external control under the form of accountability, what implies maintaining individuals and institutions responsible for their performance – that is, some actors have the right, and sometimes the obligation, of controlling the performance of other actors, according to a set of pre-established patterns. It is thus possible to verify whether the performance under consideration is being accomplished according to those patterns or, if this is not the case, to impose sanctions or determine responsibilities. These actors, controlled or controllers, may be determined individuals or institutions. In the same sense, the European Court of Auditors establishes that "the concept of accountability implies the existence of at least two actors: the person A giving an account and another person B that receives it".

Grant and Keohane distinguish between accountability and the different mechanisms which constitute the system of checks and balances, as the veto power instituted by the Convention of Philadelphia. The later are related to resources destined to the "prevention of actions that may come to be considered offensive"; while the former functions after the fact, "exposing the actions to be examined, judging and sanctioning them", as the power of impeachment.[3]

The concept of accountability, however, is far from being consensual. According to the General Accounting Office – GAO,[4] "accountability is an important yet elusive concept, whose meaning and characteristics differ depending upon the context" (Behn, 2001:3) and, for this very reason, its limits and contents are not much precise. Behn suggests that accountability is, most of the times, associated to the idea of financial control, for, as observed by Bardach and Lesser, "financial controls are among the few tools of legislative control over the administration […], what conduced to the notion that it is 'a virtual synonym for the whole concept of accountability'". According to Behn, this is why its meaning "has established the framework for other holding-people-accountable systems" (Behn, *op.cit*., p. 7), i.e., other systems claiming for individual or collective responsibility.

Michael Power seeks to go beyond the strictly financial sense in discussing three other possible operationalizations of the concept of accountability, besides the fiscal regularity, in the sense of accountability for the properly legal stewardship of inputs. Referring the three "E" rule, he mentions "*Economy* as *accountability* for obtaining the best possible terms under which resources are acquired; efficiency as *accountability* for ensuring that maximum resources are used to achieve a given level of output/service; and *effectiveness* as *accountability* for ensuring that outcomes conform to intentions, as defined in programs" (Power, 1999:49-50).

Scott Mainwaring adds another dimension to the concept, accentuating the dimension of public responsibility of representatives before those they represent. To him, accountability is normally related to the "responsiveness and responsibility of public servants" (Mainwaring & Welna, 2003). Democratic accountability refers to public actors, elected and non-elected; the

[3] In analyzing accountability and abuses in world politics, Grant and Keohane (2005) have established seven kinds of mechanisms of accountability, based on different types of control - hierarchical, supervisory, fiscal, legal, market, peer, and public reputational -, with the respective controllers and controlled, the costs to which they are subject and the examples of each case.

[4] The GAO, as we shall see farther on, is the American equivalent to the Brazilian *Tribunal de Contas;* from 2004 onwards, it passed to be denominated Government Accountability Office, obviously maintaining the same abbreviation (www.gao.gov).

former controlled by the electors, the later, by governmental agencies. Guillermo O'Donnell classifies and qualifies accountability in two levels: horizontal and vertical. Vertical accountability refers to actions accomplished, individually or by some type of organized action, with reference to those occupying posts in state institutions, elected or not; horizontal accountability "refers to the existence of state agencies that have the right and the legal power for (and are effectively inclined and able to) the accomplishment of actions going from the routine supervision to legal sanctions, or even to the impeachment against actions or omissions of other agents or agencies of the state that could be qualified as offensive" (1998:40). Similarly, Mainwaring refers the intra-state accountability which, as suggested by the denomination itself, is characterized by a control carried out by organs of the state between themselves (*idem*, p. 20).

Analyzing O'Donnell's definition of horizontal accountability, Charles Kenney distinguishes four aspects in it: its object are public agents; its themes are always related to public agents as well; its meanings include omission, sanctions and impeachments; its extent is limited to actions and omissions qualified as illegal (Kenney, 2003:57).

Therefore, the efficiency of horizontal accountability will be influenced by its institutional design, as showed by the aspects above pointed out, especially in the last item. Kenney argues that the capacity for sanction is essential to the concept of accountability (*idem*). To him, the inexistence of sanctions is a diminished form of accountability, for without sanctions there are no obligations. O'Donnell agrees that the capacity of enforcement is fundamental for the success of the institutions of accountability. The sanctions inherent to the horizontal accountability "include the capacity of removing a person of his/her office and applying civil and criminal penalties" (O'Donnell, 2003). As we shall see farther on, its capacity of enforcement, that is, its assigned functions, competences, larger or lesser legal extents and punitive capacity will define the degree of autonomy and effectiveness of its performance. In the same line, Brinkerhoff adds that "the availability of the overseeing actor(s) to impose punishment on the accountable actor(s) for failures and transgressions gives 'teeth' to accountability" (Bringerhoff, 2004).

Although, ultimately, the more effective democratic control is that verified by occasion of elections – when the voter has the opportunity of evaluating the delegation accorded to the ruler -, the dynamic nature of public administration demands a permanent and quotidian process of control, whose extent, as already mentioned, shall be extended to public servants or agents responsible for public activities and by its non-partisan character. The horizontal

modality fulfils these requirements: being proactive, it counts with an institution whose desideratum is surveillance and control; being continuous, it operates permanently; being preventive, it prevents and punishes illegal actions; and being impartial, it uses non-partisan legal criteria (*idem*).

The Legislative power is, historically, the typical institution of horizontal accountability. Besides the elaboration of laws and the representation of interests, the whole set of its activities includes financial and budgetary supervision, modernly increased by the control of performance. The Parliament's inefficacy and inexperience in overseeing/monitoring public expenditures, however, allied to the desirable impartiality of this kind of activity, have justified the creation of specific Superior Institutions of Control destined to the control of public administration. These institutions historically assumed two distinct institutional designs, the Tribunal of Accounts and the General Audit Office, and constitute the most important non-elected institutions of accountability.

The Tribunal of Accounts is an institution characteristic of continental European democracy. Tribunals are organs of a collegiate nature, being generally independent or enjoying a relative autonomy vis-à-vis the government and public administration; in some cases, as in Germany, they are not linked to any of the three powers; in others, as in France, they assist the Parliament and the Government in the control and execution of the laws of finance; or, as in Spain and Brazil, they are organs dependent on, or auxiliary to, the Legislative.

England and the countries that received its cultural and political influence have adopted the general audit system. The most notorious examples of such modality are the English *National Audit Office – NAO*, and the American *General Accounting Office – GAO*, which, as we have seen, passed to be denominated *Government Accountability Office*, and is directed by a general controller with a 15 years non-renewable mandate confirmed by the Senate. The GAO

> "[…] is the Congress' first filter of investigation. The agency sends Congress more than a thousand reports annually addressing ways to root out waste and fraud in government programs and promote program performance. *GAO* studies frequently lead to the introduction of legislation, congressional hearings, or cost-saving administrative changes […]. The GAO only works for Congress" (Oleszek, 1996:310).

Some authors, among them Santiso (2007) and Allen & Tommasi (2001), consider the existence of a third type of superior institution of control, the Board Model, which, in spite of

maintaining a collegial institutional design, as that of the courts of accounts, does not have a "jurisdictional authority" or "quasi-judicial powers" (Santiso, op. cit., p. 8). As we shall see, the Argentinean *Auditoria General de la Nación* comes close to this institutional design. Even among the organs characterized by the typical institutional design of the courts of account, however, it is usual finding institutions lacking the so-called "judicial power".

O'Donnell considers such institutions as typical of horizontal accountability and suggests that they should incorporate the opposition parties "having attained a reasonable level of electoral support",[5] should be "highly professionalized" and endowed with resources "sufficient and independent" of the Executive's cooptation (O'Donnell, 1998:49).

The European Organization of Supreme Audit Institutions – Eurosai –, the organ that congregates the accounting tribunals and audit offices in Europe, has recently established a set of criteria defining an ideal institutional design for the Superior Institutions of Control – SIC. Such criteria are the following: Constitutionally Defined Position; Independence; Defined Structure; Financial and Budgetary Independence; Legal Guaranties and Immunities; Autonomy in Defining Work Methods and Programs; Universally Recruited and Specialized Personnel; Unrestricted Access to Information; Reports Not Subject to Restrictions; Following of the Recommendations (Eurosai, 1998).

In the last decades, the SIC are being significantly strengthened. In 1975, the European Community Tribunal of Accounts has been created with the justification that "in a democratic system, all citizens have the right to know how the public money is used" (CEE, 1989), and it is maintained in the present project of Constitution, as the institution "that effectuates the control of the accounts".[6] According to R. L. Torres (1993), some modern Constitutions (Italy, 1947; Germany, 1949; Spain, 1978) have brought "innumerable improvements in the field of accounting control", while in the 1980's the legislations of Sweden, England, Switzerland, United States and Canada underwent "substantial modifications" with the same purpose. In the same way, Brazilian and Argentinean new democracies also introduced, in their respective institutional orders, mechanisms of control with updated institutional designs.

External Control in Brazil and Argentine

[5] The author came to propose that the direction of the institution be responsibility of the opposition (O'Donnell, 1998:49).

[6] Adding that it "[...] examines the accounts of the total revenues and expenditures of the Union and assures the good financial management [, being] composed by a national of each member-State; [and] its members perform the two functions with total independence" (*Projecto de Tratado*, art. 30, 2003:38-39).

From their respective processes of re-democratization onwards, Brazil and Argentine have reinforced control and surveillance over the Executive power. The changes have been elaborated through the concession of new prerogatives to the external control performed by the Legislative power, and through modifications in the institutional design of its auxiliary institutions, the *Tribunal de Contas da União* and the *Auditoría General de la Nación,* respectively. In this section, I intend to work out a brief account of the nature of this type of control in those two societies and to emphasize the main points introduced by the new institutionalities.

External Control in Brazil

In Brazil, the 1824 Imperial Constitution restricted itself to assign to the Legislative power the prerogative of "determining the public expenditures and dividing the direct contribution" (art. 15, X, Campanhole, 2000, p. 793). With the arrival of the Republic, the Constitution of 1891 instituted the Tribunal of Accounts as an auxiliary organ of the Legislative Power. During the republican period, its institutional design varied according to the role exerted by that Power. Weak in the Constitution of 1891, it enhanced its prerogatives in 1934, was annulled by the Charter of 1937, and rehabilitated in 1946, with the enlargement of the democratic process which followed the end of the Second World War. The 1964 Coup d'État and the authoritarian regime, which was extended for more than two decades, promoted retrogressions marked by the Constitution of 1967 and the 1969 Amendment nº 1. With the collapse of the authoritarian regime, the Legislative Power and, therefore, the Tribunal acquired new attributions.

The improvement of the external control by Congress and the modern features assumed by the Tribunal are due to the Constitutions of 1934 and 1946. The *ex ante* registry was introduced; the ministers – appointed for life by the President of the Republic after ratification by the Senate – had their wages and advantages equalized to those of the ministers of the Federal Tribunal of Appeal, the second organ in importance in the hierarchy of the Judiciary; the examination by the Congress of the annual accounts of the President of the Republic became dependent on a previous authoritative opinion issued by the Tribunal of Accounts.

The Constitutions of 1967 and 1969 extinguished the *ex ante* registration, although maintaining large part of the previous institutional design. During most part of the authoritarian regime, however, the constitutional order coexisted with the institutional acts

issued by the Executive "in consultation with the National Security Council", which suspended all the guarantees associated with the exercise of the judiciary function (lifelong tenure, irremovability from the office and irreducibility of wages) that were accorded to the ministers of the Accounting Tribunal, among others. In this period, modifications of constitutional and infra-constitutional character occurred, which have been responsible for what, in another occasion, I called "escape from control", and were characterized by the elimination of control over significant contingent of public resources holders (Pessanha, 1997). The most important case was the legislation, contained in those two constitutional texts, respecting the contracts of public sector purchases from the private sector. Besides extinguishing the previous registration, the control over contracts was reversed with the introduction of the device of "*decurso de prazo*" – the automatic approval of a matter not examined after expired a determined time limit –, so much used in order to approve laws and decree-laws. According to the constitutional text, in the event of illegality in any expenditure, it would be up to the Tribunal of Accounts to establish a term for the concerned organ to adopt measures in order to abide by the law, and, in case of non compliance, "to halt the execution of the act, except in what refers to contracts". In this case, the Tribunal should appeal to the Legislative for the measures necessary "to protect the legal purposes"; and, in case of absence of deliberation by the Congress in a 30 days term, the impugnation would be considered ineffectual, and hence "regular" the act under consideration; in other words, the wrong would become right by "*decurso de prazo*"! Of course, in an epoch when the official party was hegemonic and the Executive had the faculty of "repealing the mandate" of any congressman, in base of the so called institutional acts, it was easy to prevent the verification of irregularities through enforcing the *decurso de prazo*.

From 1988 onwards, the external control exerted by the Legislative, assisted by the Tribunal, is considerably enhanced by the Federal Constitution, which disposes that

> "[…] the accounting, financial, budgetary, operational and patrimonial control of the Union and the direct and indirect entities of the administration, as to their legality, legitimacy, economic efficiency, and to the application of subventions and renunciation of revenues, will be exerted by the Congress through external control, and by the system of internal control of each Power" (art. 70).

The former constitutional texts were restricted to the financial and budgetary control. An interesting aspect is the inclusion of the economic efficiency criterion, which, in other words, represents the rule of the three "E"s that I have mentioned above. This is an important prerogative assigned to the external control, which, from then on, will not be limited to

formal control, but will constitute an audit of performance or, as alternatively called, an audit of outcomes. The text clearly defines the extent of those subject to control, prescribing that "will be accountable any person or public entity that use, collect, hold, manage or administer public moneys, properties and securities" (single paragraph, art. 70).

The Union's Tribunal of Accounts is accorded a bunch of competences that effectively reinforce its role. Among its most important prerogatives stands out the obligation of "verifying the accounts annually rendered by the President of the Republic, through a previous authoritative opinion prepared within sixty days after their reception" (art. 71, I), to be remitted, for a definitive examination, to the National Congress, which is effectively entitled to judge "the accounts rendered by the President of the Republic and to appraise the reports on the implementation of the government plans" (art. 49, IX), in order to decide to "accept them or not". In this case, "there will be a crime of responsibility, that could even end up in impeachment" (Waterhouse, 1989:368). In defining the duties of the Executive Power, the constitutional text reinforces the obligatory character of the control and the presidential accountability, prescribing that the President shall "render annually to the National Congress, within sixty days after the opening of the legislative session, the accounts relative to the previous fiscal year (art. 84, xxiv).[7]

The text yet establishes a set of attributions, listed in art. 71; among the most important, it is possible to single out the trial of all public managers and other incumbents responsible for public moneys, properties and securities, in the direct and indirect administration, preventing margins of exemptions from control; and, in case of illegality of public expenditures or account irregularities, the application to the responsible of due sanctions anticipated by law, which shall establish fines proportional to the harms caused to the State's treasury.

The infra-constitutional legislation clearly reproduces the new attributions, preventing the dubious institutes that, in the past, provided the opportunity of escaping from control. The Law n. 8443, of July 16, 1992, the Organic Law of the Tribunal of Accounts, ratified and specified the constitutional precepts. Subsequently, the Complementary Law n. 101, of May 4, 2000, known as the *Lei de Responsabilidade Fiscal* – LRF [Fiscal Responsibility Law],

[7] Subsequently, the *Lei Complementar n. 101/2000* determined that: "The accounts rendered by the Heads of the Executive Power will include, besides their own, those of the presidents of the organs of the Legislative and the Judiciary as well as those of the head of the Federal Public Attorney's Office, referred to in art. 20, to which, separately, previous and conclusive opinions from the respective Tribunal of Accounts will be given. The Tribunals of Accounts will issue previous and conclusive opinions on the accounts within a period of sixty days after receiving them, unless differently disposed in state constitutions or municipal organic laws" (art. 56). The whole set of the accounts constitutes the Accounts of the Republic's Government.

established new controls over federal, state, and municipal administrations [8] and enlarged the Tribunal's sphere of action, determining its participation in the control of expenditures of the three powers and agencies of governmental cooperation, the same role being assigned to the regional tribunals [9] in relation to state and municipal governments. Besides the LRF, other legal statutes "impose [to the Tribunal] the obligation to examine in the annual accounts, under several aspects, the performance of the government" (Zymler, 2005:9).[10]

As to the contracts, one notices a recovery of the Tribunal's scope of actuation, that had been formerly subtracted by the authoritarian regime, although without the complete return of the *ex ante* registration. In case of irregularity, the act of suspension shall be adopted directly by the Congress that ought to require immediately that the Executive take the due measures; "the part regarding itself as impaired may interpose an appeal, without suspensive effect, before the Congress". In the hypothesis of absence of Congress manifestation within 90 days, "the Tribunal will decide on the question" (art. 71, XI, # 1º, or Campanhole, p. 52).

The new Constitution furthermore produced a radical change in the recruitment of the Tribunal's deliberative body. For the first time since 1891, the Executive loses the monopoly over the minister's recruiting, passing to the Legislative the prerogative of nominating the two thirds of the Tribunal's composition. The constitutional text determines that, from the nine ministers, all with lifelong tenure, six shall be nominated by Congress, falling to the President, after the Senate's approval, the designation of the other three. From these, however, only one will be freely chosen by the President, for the other two shall necessarily be chosen amongst Tribunal's career functionaries – auditors and attorneys, admitted through official examination – from a triple list prepared by the Tribunal and subject, alternately, to criteria of merit and seniority. The Constitution determines as well the equalization of the ministers' earnings and other benefits to those of the ministers of the *Superior Tribunal de*

[8] The *LRF* established a rigid control over the expenditures with personnel "in each period of verification and in each federative entity", determining maximal percentages for that kind of expenditure: "I- Union 50%; II – states 60%; Municipalities 60%" (LRF, 2002:26).

[9] The rules established for the *TCU* (the Union's Tribunal of Accounts) "apply, when pertinent, to the organization, composition, and control of the Tribunals of Accounts of the States and the Federal District, as well as to the Tribunals and Councils of Accounts of Municipalities" (art. 75, CF, p. 53). On regional tribunals, see Arantes *et alii* (2005:57-83) and Melo *et alii* (2006).

[10] See, among others, Law n. 8,313/1991, which determines the Tribunal the following of the evaluation of the application in cultural projects of resources stemmed from renunciation of revenues. The Law n. 9,394, of December 20, 1996, obliges the controlling agencies to examine the fulfillment of the constitutional dispositives compelling the application of a minimum percentage of public revenues in education. The Law n. 10,707, Law of Budgetary Guidelines for the fiscal year of 2004, for instance, determined the *TCU*'s "obligatoriness of appraising and classifying government programs as satisfactory or unsatisfactory" (Zymler, 2005).

Justiça (Superior Tribunal of Justice), an organ situated just below the *Supremo Tribunal Federal*, the Brazilian Supreme Court.[11]

The 1988 Constitution promoted, therefore, a significant improvement in the functions of supervision and control exerted by the Legislative branch, both through the enlargement of its competences, of its influence on the recruitment of the Tribunal's ministers – symmetrically reducing the influence of the Executive, main target of the control –, and especially through the strengthening of the Tribunal of Accounts, which is an auxiliary but not a subordinate organ as asserts Martins (1992).

External Control in Argentina

The Argentinean Constitution of 1853 instituted the Legislative Power as the organ responsible for the external control, establishing its competence for "defining annually the Nation's budget of expenditures and to approve, or refuse, the investment account" (Ekmekdjian, 1988:92). With this, the constitutional text was situated among the most advanced for a time when, in some way, the more effective control of the Parliament over the Government was inaugurated, even in the most advanced democracies.

A series of reforms and improvements ensued along the century that followed. The most important of them was the Decree-Law n. 23,354, of December 31, 1956, the *Ley de Contabilidad* (Law of Accounting) of 1958, which introduced, for the first time in the country's history, the *Tribunal de Cuentas de la Nación* (the Tribunal of Accounts of the Nation), whose functions were synthesized in two main branches: that of the legal (legality and observation of legal dispositions) and the technical controls (economic and accounting controls properly); and that of the jurisdictional controls, involving the judgment of accounts and the judgment of responsibilities (art. 78).

Its deliberative body was composed by five members, [12] who should have the "title of public accountant issued by a national university, have more than thirty years of age, and have at least five years of seniority in the title" (*idem*). The appointment of the members of the deliberative body was a prerogative of the Executive, by suggestion of the Finance Minister

[11] The constitutional text determines the following requirements for nomination: "I – more than 35 and less than 65 years of age; II – moral idoneity and unblemished reputation; III – notorious knowledge in judicial, accounting, economic and financial matters or in public administration; IV – more than 10 years of exercise in a function or a professional activity requiring the knowledge above mentioned" (Companhole, art. 73, *op. cit.*).

[12] Being the presidency exerted in conformity to the principle of annual alternation based on seniority in the office or on the criterion of age (art. 78).

and with the "agreement of the Senate" (*idem*).[13] Their removal was subjected to the same process affecting the members of the Senate, and there was not the assurance of a lifelong tenure. The fulfillment of the function was incompatible with the exercise of any other "remunerated activity", except teaching, and its remuneration was equalized to that of the members of the National Chambers of Appeals, the courts situated just below the Supreme Court of Justice.

The Tribunal counted with organizational autonomy. Its administrative staff included two Secretaries, and a body of fiscal accountants, besides the auxiliary personnel defined by the budgetary law (*Ley de Presupuesto*). The posts of "general fiscal accountant" and of "fiscal accountant" required the title of public accountant issued by a "national university" or, in the absence of such title, ten years of continued practice in the Tribunal of Accounts or in the National Accounting Department.

It was up to the Tribunal to establish its own internal rules, to appoint its own personnel, to define rules for the rendering of accounts and to examine the investment accounts (art. 83). The legislation furthermore establishes the Tribunal's decision as a pre-requisite for the promotion of judicial suits in order to verify responsibilities (art. 86, idem).

In spite of both the competence of the Legislative branch with respect to the external control, and of the fact that the Tribunal's organizational structure and attributions contemplate institutes comparable to those existent in societies of advanced democratic development, its performance has been object of harsh criticisms. One of the strong reasons for these criticisms has been the lack of regularity in the accounts appraisals. In fact, there has never been obligatoriness of rendering accounts, and furthermore, since 1947, there has been in force the clause of "*decurso de prazo*", which determined the tacit or automatic approval of the accounts non-examined after elapsed "five periods of ordinary sessions" from their presentation.[14] This, in fact, amounts to a clear inversion of the capacity of enforcement,

[13] "The agreement of the Senate will be suppressed by the law n. 20,677", related to the *Proceso de Reorganización Nacional* (National Reorganization Process) perpetrated by the Military Junta (Colman, 1990), withdrawing from the Legislative an important instrument of control and, symmetrically, strengthening the Executive power.

[14] In spite of little observance, by the Tribunal and the Legislative, in the appreciation and judgment of the Executive's accounts, rejections have been recorded at the time of the military regime referring to the periods 1966-1972, decided in 1986, and 1976-1983, decided in 1990. M.C. Baccaro justifies such rejections by "*de facto* governments that, standing off from the republican system of division of powers, caused the budgetary decision and the expenditures execution to be assigned to the same power" (Baccaro, 2005:418-419). Obviously, such decisions had a merely symbolic character.

leaving the escape of control at the reach of the controlled.[15] The creation of the Tribunal through ordinary legislation and the constitutional omission of its existence have made easy its extinction by Menem's Government.[16]

The modifications introduced in the process of budgetary elaboration, control, and monitoring in Argentina after the fall of the authoritarian regime have preceded the Constitutional Reform of 1994. The promulgation of the Law n. 24,156 of October 26, 1992, also known as the Law of Financial Administration – LFA, created a set of norms and institutions regulating the financial administration and the systems of control of the public sector of the country. This is understood as the ensemble formed by "systems, agencies, norms and administrative procedures that make possible the obtainment of public resources and their application in order to fulfill the State's goals" (art. 2º:243). The law defines the public sector's internal and external controls, based on a "regime of responsibility" that stipulates "the public servant's obligation to render account of their management" (*idem*). For that matter, two agencies are created, being responsible, respectively, for the internal and external controls: the *Sindicatura General de la Nación* (the General Controllership of the Nation), in the sphere of the Executive and in charge of the internal control, and the *Auditoría General de la Nación* (the Nation's General Audit Agency), charged of the external control, as an auxiliary organ of the Legislative branch.

The rendering of accounts is emphasized in the new legislation, which determines its presentation to the Congress "before the 30th of July of the year following that to which corresponds the document", and establishes the minimal contents of the *Cuentas de Inversión*, starting with information on "the state of execution of the national administration budget" at the closing date of the fiscal year.[17] The control's diversity, however, is determined by the obligatory character of the insertion of "comments on: (a) the degree of

[15] On this aspect, see Palermo & Novaro (1996:404).

[16] The law also requires the presentation of "b) demonstrative reports on the movements and situation of the central administration's Treasury; c) on the updated state of the internal, external, direct and indirect public debt; d) on the central administration financial and accounting situation; e) a report presenting the public sector consolidated financial management during the fiscal year, showing the respective operative, economic and financial outcomes" (art. 95, Law 24,156, 1992) Despouy, 2002, p. 271).

[17] The LFA, however, does not explain the participation of the AGN in the examination of the "*cuentas de inversión*" (investment accounts).

accomplishment of the objectives and goals anticipated in the budget; (b) the fulfillment of the costs and efficiency indicators of public production; (c) the financial management of the national public sector" (art. 95:266).

In the part dedicated to the external control, the main article creates the *Auditoria General de la Nación* as the "entity of external control of the national public sector, dependent on the National Congress", endowed with "its own juridical personality, functional independence" and, for assuring its purposes, "financial independence" (Title III, Despouy, 2002, 271). Besides the "dependence" of the audit relatively to the Congress, the new legislation establishes that "its organic structure, its basic internal norms, the distribution of functions and fundamental operational norms will be established initially through joint resolutions of the *Comisión Parlamentaria Mixta Revisora de Cuentas* and the *Comisión de Presupuesto y Hacienda* of both houses of Congress". The subsequent modifications, however, "will be proposed by the audit itself to the referred commissions, which will approve them" (*idem*).

The AGN has a large range of authority, falling upon it, especially, "the external ex-post control of budgetary, economic, financial, and legal management, as well as financial opinions on the central administration, centralized organs, public enterprises and corporations, public services regulatory agencies, the municipality of Buenos Aires" (art. 117, idem), besides private entities assignees of privatization processes.

The legislation creates a Deliberative Body of seven general-auditors, who must have "a university degree in economics or law, proved specialization in financial administration and control, being designated for a mandate of eight years, with possibility of renovation". Six of these auditors will be appointed by resolutions of the National Congress' chambers, "three by the Senate and three by the Deputy Chamber". The seventh will be jointly designated by the presidents of the two Legislative Houses and "will be the president of the organ" (art. 122, *idem*).

Later on, the 1994 Constitutional Reform confirmed the Legislative as titular of the controlling function, establishing that "the external control of the national public sector, in its patrimonial, economic, financial and operational aspects, will be a proper attribution of the Legislative power" (*Constitución*, 1995, art. 85, *idem*). The Reform ratified the audit's importance for the external control, establishing that "the examination and opinion of the Legislative power about the performance and general situation of public administration will be based on the opinions of the *Auditoría General de la Nación*" (*idem*), defined as an

"organism of technical assistance to Congress, with functional autonomy". The Constitution determines an ulterior regulation, of the AGN's creation and functioning, through ordinary law "to be approved by absolute majority of members of each Chamber", which yet did not occur[18] (*idem*).

As to the AGN attributions, the text clearly determines that it "will be in charge of the control of legality and management, and the audit of the entire activity of centralized and decentralized public administration, independently of its form of organization", leaving furthermore the door open to inclusion of new prerogatives, when it adds: "[and] the other functions that the law" may later come to confer (*idem*).

Another important and innovator aspect added by the constitutional text is related to the fulfillment of the Audit's presidency. Modifying the recent former legislation, it establishes that the seventh General Auditor, the president of the AGN, will be appointed by "proposition of the opposition party with larger number of legislators in the Congress" (art. 85), a disposition that institutionally incorporates the opposition into the process of accountability. The Audit, in its turn, gave a broad interpretation to the legislation and added other dimensions to the control, disposing that "the primary goal of the *Auditoría General de la Nación* is to contribute to the adoption of effective, economic, and efficacious decisions in what refers to public expenditures and revenues", in direct allusion to the precepts of modern accountability (www.agn.gov.ar).

The inclusion, for the first time, of the Audit into the constitutional text represents, by itself, a progress in the importance of the external control in Argentina. However, the advancements determined by the Law of Financial Administration, the distinctiveness of the prescribed attributions and of the role to be accomplished by the Congress and the opposition in the external control, significantly enlarge the protagonism of the Argentinean Legislative in the process of external control. Rodriguez & Bonvecchi (2006:490) synthesize this new reality when affirming that "the Constitution and the laws […] assign to the Legislative power capacity of control over the budgetary execution".[19]

[18] According to Arzuaga, "the constituent of 1994 has endowed the AGN with 'functional autonomy', remitting its integration to what will be established by the law" (Arzuaga, 1999, p. 229); yet, until **may, 31, 2010**, such law had not been approved.

[19] According to those authors, the Argentinean Congress has, among other prerogatives, the power of "approval over the investment accounts, which compile the budget's physical and financial execution, through the

It is already a common place to talk about the Parliament's frailty in South America along the twentieth century. The frequent political discontinuities always strengthened the Executives, impairing the Legislatives' performance, when not entirely assuming their functions. According to José Afonso de Souza, "the Courts of Accounts always follow the positions of the Legislative power" and, therefore, when it "is suffocated by the authoritarianism or by the loss of basic attributions", they suffer the "consequences in a deeper degree" (Silva, 2000:731). Such statements justify the trajectory of the institution in Brazil. But the situation is not much different in Argentina. According to Quiroga Lavié,

> "[…] the adrift boat that the country has become, especially from the 1930's onwards, has been a direct consequence of the malfunctioning of the control system foreseen in the historical text in relation to the administration's performance, above all in patrimonial matter. During long budgetary exercises, the Congress has not approved the investment account; and when it did, on exercises of several years back, the approval was like a formal ratification, and did not mean any control over the administration" (Lavié, 1996:527).

The new opportunities for the two countries opened with the transition to democracy have increased, as we have seen, the attributions of the respective Legislatives.[20] Generally speaking, with respect to the external control, the new institutional designs have equipped the Legislative Power and its respective auxiliary organs with important mechanisms for exercising their constitutional mission in a form consentaneous with the modality of accountability. I emphasize the role of the Legislative in the appreciation of the governmental accounts and its influence over the recruitment of the Deliberative Body of the superior institutions of control (auxiliary).

The two courts of accounts have the direct constitutional responsibilities of collaborating decisively in the elaboration of the opinion that precedes, although without a binding character, the analysis of the governmental accounts by the respective Legislatives. This marks a continuity in the Brazilian case, but an innovation in the Argentinean, where such attribution had never been constitutionally foreseen. Moreover, the Legislatives have

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Comisión Mixta Revisora de Cuentas" and of ordering the AGN "the accomplishment of researches and reports on programs of public administration and/or on determined management periods" (*idem*).

[20] In spite of the progresses, the non-attended demands are frequent in both countries. A common claim of the Brazilian Tribunal of Accounts and the Argentinean Audit Court is that they are excluded from the institutions with access to the banking and fiscal data of public resources holders, which are protected by secrecy. In Argentina, furthermore, the authorities claim for the approval of the law regulating the activities of the AGN, as asserted in the Constitution.

increased their role in the surveillance/control of the Executive and have broken its monopoly in the recruitment of the auxiliary institutions' Deliberative Body. This has happened partially in Brazil, where two thirds of the members passed to be appointed by the Congress and one third by the President of the Republic, and integrally in Argentine, where the two Legislative Houses passed to equally divide among them the appointment of six general-auditors, being the seventh indicated – in a great innovation – by the major opposition party that, in this way, acquires a protagonist role in the external control.

Thus, as much in Brazil as in Argentina, these institutions have been stimulated by a re-democratization process translated in principles that, in a certain way, attended the prescribed requirements of a good institutional design for accountability institutions, in the sense of efficaciously equipping them with the tools for the exercise of their constitutional mission, as described in the first section of this article.

Analysis of Performance

Even considering that some sectors would like to obtain more prerogatives for the institutions consecrated to the exercise of the external control, it is undeniable the improvement of the competences introduced in the Brazilian and Argentinean constitutional texts elaborated after the fall of the respective authoritarian regimes. Notwithstanding, the expectation generated by the new institutional orders is not getting a satisfactory correspondence in the performance of the institutions. In this section, I intend to evaluate the performance of the external control from the entry in force of the new statutes, having in view the renderings of governmental accounts and the recruitment of the new members of the deliberative bodies of the two superior institutions of control.

As already observed, the analysis of accounts represents the best gauging instrument for governmental performance evaluation. Historically, even in the periods of greater political participation, both Brazil and Argentina have neglected this obligation. In Brazil, the Tribunal of Accounts issued favorable opinions on all the presidential accounts since 1946, and the Congress has always extended the term for judgment; in Argentina, the accounts have never been systematically presented and, as we have seen, during a significant period, the clause of automatic approval by expiration of time has been in force for the investment accounts, with the consequent automatic approval of several accounts that have not been appreciated in a term of five years.

In Brazil, according to table 1, that follows, all the accounts presented from 1988 onwards have been appreciated within the established constitutional term and invariably approved by the Tribunal of Accounts, although some of them with "reservations" and/or "recommendations".[21] It is however convenient to remember that the Tribunal is an "auxiliary organ" of the Legislative, which is the competent power for the final judgment of presidential accounts. In the same table, one notices that: (a) Fernando Collor's accounts, approved by the Tribunal, have not yet been judged by the Legislative, at least until the December 31, 2006, when this work was finished; (b) is incredible the time elapsed between the appreciation by the Tribunal and the judgment by Congress - Itamar Franco's accounts, relative to the year of 1993, have been judged by the Congress nine years later; of the eight renderings of accounts of Fernando Henrique Cardoso, six have been approved in the same day, at the end of his government, on December 20, 2002; and those related to the last year of his administration, in February, 2003 -; (c) the accounts of 2003, 2004, 2005, 2006, 2007 and 2008 of Luiz Inácio Lula da Silva, also approved by the Tribunal within the constitutionally determined time interval, have not yet been judged by the Legislative; and (d) when Fernando Henrique Cardoso and Luiz Inácio Lula da Silva presented themselves to reelection, respectively in 1998 and 2006, not any of their first mandates' accounts had been judged by the Legislative, i.e., the electors voted without the knowledge of a public analysis of both presidents' performances.[22]

[21] The 2006 previous opinion on the accounts of the President of the Republic, for instance, presents such restrictions when considering that "the reservations pointed out in the conclusion of the Report, although not constituting a major reason for impeaching the approval of the President's accounts referred to the exercise of 2005, require the adoption of pertinent correcting measures" (Campelo, 2006:2) (http://www2.tcu.gov.br/pls/portal/docs).

[22] The National Congress Resolution n. 2, of September 15, 1995 (DCN, 09.15.95), which regulated the *Comissão Mista de Planos e Orçamentos Públicos e Fiscalização – CMOF*, created a series of procedures for the analysis of presidential accounts, among them a schedule for the normal course of the accounts' control process, whose objective was to put an end to the lack of coordination between the appreciation of the *TCU* and the judgment by the Congress. This, obviously, did not work.

Tableau 1
Course of Presidency Accounts of Brazil's Federal Administration
1989-2009

Accounts of the Presidency	Administration	Tribunal of Accounts	National Congress
1988	Sarney	**App. 06.89**	**Approved,** 05.91
1989	Sarney	App. 05.90	**Approved,** 05.92
1990	Collor (1)	App. 06.91	NA
1991	Collor	App. 06.92	NA
1992	Collor (3)	App. 06.93	NA
1993	Itamar	App. 06.94 **App. Rec. 06.94**	**Approved,** 12.02
1994	Itamar	App. Rec. 06.95	**Approved** 12.96
1995	FHC	App. Rec. 05.96	**Approved,** 12.02
1996	FHC	App. 06.97	**Approved**, 12.02
1997	FHC	App. 06.98	**Approved**, 12.02
1998	FHC	App. Res. 06.99	**Approved**, 12.02
1999	FHC	App. Rec. 06.00	**Approved,** 02.03
2000	FHC	App. Res. 06.01	**Approved**, 12.02
2001	FHC	App. Res. 06.02	**Approved,** 12.02
2002	FHC	App. Res. 06.03	NA
2003	Lula	App. Rec. 06.04	NA
2004	Lula	App. 06.05	NA
2005	Lula	App. Res. 06.06	NA
2006	Lula	App. Res. 16.06	NA
2007	Lula	App. Res. 06.08	NA
2008	Lula	App. Res. 06.09	NA
2009	Lula	App. Res. 09.06	NA

Source: TCU, Semag – Secretaria de Marco Avaliações Governamentais.
Obs: (1) Includes the period from January 1 to March 15 of the Sarney's Administration; (2) Accounts not appreciated until May 19, 2010; and (3) Itamar Franco took office provisionally in September 2 and definitively from December 27 on, 1992.
Conventions: NA = not appreciated until May 30, 2010; App. Res. = Approved with reservations; App. Rec. = Approved with recommendations; App. Res. Rec = Approved with reservations and recommendations.

In Argentina, the treatment given to the annual accounts of the Executive is a good example of the little importance attributed to control by the organs in charge. As from 1993, the legislation in force abrogated the rule of automatic approval, and the Constitutional Reform determined that the will of each Chamber should be expressly manifested, but it did not

introduce any mechanism disciplining the term for the accounts appreciation, restricting itself to establish a deadline for the accounts delivery, which is not respected.[23]

According to tableau 2, since 1993 - year in which the new legislation entered into force and the AGN started its activities - the appreciation of the ***cuentas de inversión*** has not been much systematically carried out. The AGN has been appreciating the accounts with a certain regularity, but most of the times the Executive branch delayed their delivery, despite the deadline established by the legislation: the 30th of July of the following year. From the 18 fiscal years accomplished since then, around 50% had not their accounts appreciated by the Congress, which, as in Brazil, has not a definite time to conclude its assessment. From the accounts examined and approved, six have been appreciated ensemble, from 1999 to 2004, in a similar process to that occurred in Brazil between 1995 and 2001. The others were examined and approved two or three years after the end of their respective fiscal years. Carlos Menen still has three accounts of his first administration without judgement by the Legislative; notwithstanding, similarly to his Brazilian homologues, he present himself as a candidate to re-election having only one ***cuenta de inversión*** (from his first term) judged by the Congress. Since 2005, no accounts of any fiscal years have been definitively judged by the Legislative.

[23] According to an assertion of 2005 by Leandro Despouy, President of the AGN, "in the last ten years, the investment accounts have not been approved […]. Those of 1994, 1995 and 1996 haven't yet been approved. As audit, we have already sent that of 2000. We have just approved that of 2001, and we are now analyzing that of 2002. But, simply in order to allow for the understanding of this entanglement of procedures, that of the year 2002 had to be arrived before the 30th of June, 2003, but it is arrived in March, 2004" (Despuoy, 2005:31). In another moment, the same authority adds that "it is evident that this chronic delay not only violates the principle of opportunity, but also impedes the control of fulfilling its essential function" (*idem*, p. 207).

Tableau 2
Course of Presidency Accounts of the Argentina's Federal Administration

Investments Account (cuenta inversión)	Administration	AGN Report	CN Date
1993	Menem	04/1996	Ley 24.963/98
1994	Menem	09/1997	NA (1)
1995	Menem	05/1998; 06/00	NA (1)
1996	Menem	04/1999	NA (1)
1997	Menem	06/2000	Law 26.098/06
1998	Menem	05/2001	Law 26.099/06
1999	Menem	04/2003	Law 26.328/07(2)
2000	DLRua	11/2003	Law 26.328/07 (2)
2001	DLRua	03/2005	Law 26.328/07 (2)
2002	Duhalde	02/2006	Law 26.328/07 (2)
2003	NKirchner	09/2006	Law 26.328/07 (2)
2004	NKirchner	02/2007	Law 26.328/07(2)
2005	NKirchner	11/2007	NA
2006	NKirchner	04/2008	NA
2007	CKirchner	04/2009	NA
2008	CKirchner	02/2010	NA
2009(3)	CKirchner		

Source: Auditoria General de la Nación.
(1) Approved by the Senate, but not yet by the House of Representatives
(2) Approval in block of the 1999-2004 accounts.
(3) Not delivered until June 2010.
Convention: NA = not appreciated until May 31, 2010.

Another aspect that has been arising criticisms concerns the recruitment of the Deliberative Body. The changes that made possible for the two countries' Legislative powers to participate – in majoritarian terms in Brazil and totally in Argentina – in the ministers' appointment did not produce, however, significant changes of profiles: in their majority, the appointed proceed from the two Legislative Houses and have professional backgrounds diverse from those required by the purposes of the institutions.

In Brazil, the Senate and the Deputy Chamber have equally divided the six posts reserved to them, having appointed for these posts only members of the parliament, as shows table 3. Similarly, when President Fernando Collor had the opportunity to freely indicate a minister, he opted for a politician, without professional experience in the area. President Lula da Silva had identical attitude in 2009. The improvement remained on account of the career employees, auditors and public solicitors, whose indications became compulsory in the new legislation. In fact, the requirements of expertise and notorious "juridical, of accountancy,

economic, and financial" knowledge, directly associated to the purposes of the institution, have been fulfilled solely by those ministers stemming from the Tribunal's own career positions; for the members of the parliament, worked the vague criterion of "experience in public administration".

In Brazil, the party bias concerning the composition of the *Tribunal de Contas da União* has given rise to a large number or criticisms. The distribution of the six vacancies among the two houses of the Congress is giving rise to a series of propositions tending to modify the recruitment of the Tribunal's Ministers and to confront the mentioned delay in the appreciation of the accounts.

Tableau 3
Ministers of the TCU Appointed since the 1988 Constitution

Minister	Responsible for the appointment	Last Activity	Party	Situation
Olavo Drummond	Executive	Former Member of the Parliament	PSDB	R
Iram Saraiva	Senate	Senator	PMDB	R
Humberto Souto	House of Representatives	Federal Representative	PFL	R
Bento Bugarin	Career	Auditor TCU	-	R
Valmir Campelo	Senate	Senator	PTB	A
Adylson Motta	House of Representatives	Federal Representative	PPB	R
Walton Rodrigues	Career	TCU's Solicitor		A
Guilherme Palmeira	Senate	Senator	PFL	R
Ubiratan Aguiar	House of Representatives	Federal Representative	PSDB	A
Benjamin Zymler	Career	Auditor TCU		A
Augusto Nardes	House of Representatives	Federal Representative	PP	A
Aroldo Cedraz	House of Representatives	Federal Representative	PFL	A
Raimundo Carreiro	Senate	Civil Servant attached to the Senate's Directive Board	-	A
José Jorge de Vasconcelos Lima	Senate	Senator	DEM	A
José Múcio Monteiro Filho	Executive	Federal Representative	PTB	A

Source: author's elaboration based on information from the TCU and the Congress until May 31, 2009.
Conventions: R (retired); A (active).

In Argentina, the recruitment of the Deliberative Body is also considered questionable. The National Congress, responsible for the appointment of all the auditors, recruits preferably among its own ranks, as shown in Tableau 4, transforming the control institution into an extension of the Legislative branch, what creates a party bias in the process of accounts examination and establishes a sort of redundancy in the activity of control.

In spite of the innovative character of the institutional design, which accorded the presidency of the Audit to the major oppositional party, Quiroga Lavié asseverates that the compliance with the spirit of the Constitution issued from the *Pacto de Olivos* is not being observed. To him, that advantage is being counterbalanced by the major presence of auditors appointed by the "*oficialistas*" who, therefore, hold the real control in the AGN, having "transformed the representative of the main oppositional party – charged with the presidency – into a public servant without any kind of decisional power, because four of the seven members of the organ have been chosen by the party of the majority"; accordingly, he suggests a legislative reform "establishing that the three legislators representing each house of the Congress in the AGN, as well as its president, be elected in such a way that, in its majority, they represent the main oppositional party" (Lavié, 2010, p. 3).

Tableau 4
Board of General Auditors of the AGN
(1993-2009)

Auditor	Period of Activity	Party	Origin	Situation
Héctor Masnatta	1993-1994	PJ	CN	-
Norberto Bruno	1993-1999	PJ	CD	-
Emilia Lerner	1993-1999	PJ	CD	-
Júlio César Casavelos	1993-2001	PJ	S	-
Vicente Barros	1993-1998	PJ	S	-
Héctor Rodrigues	1993-1999	UCR	S	-
Enrique Paixão	1995-1999	UCR		-
José Lapierre	1995-1999	UCR	CD	-
Héctor Duran Sabas	1998-2001	PJ	S	-
César Arias	1999	PJ	CD	-
Mario Fadel	1999	(FPS)PJ	CD	-
Francisco Fragoso	1999-2005	UCR	D	-
Alfredo Fólica	2000-2001	UCR	S	-
Francisco J. Fernándes	2001-	PJ	S	A
Gerardo Palacios	2001-2009	PJ	S	-
Leandro Despouy	2002	UCR		A
Horácio Pernasetti	2005	UCR	D	A
Vicente M. Brusca	2007	PJ	D	A
Oscar Lamberto	2007	PJ	S	A
Alejandro Nieva	2009	UCR	D	A
Vilma Castillo	2009	PJ	S(*)	A

Source: Auditoria General de La Nación.
Conventions: PJ (Partido Justicialista); UCR (União Cívica Radical); FPS (Frepaso); CD (House of Representatives); S (Senate); A (active). The underlined names correspond to the Auditors-Presidents appointed by the major oppositional party; the name in italics was appointed through inter-party agreement.
(*) Former Parliamentary Adviser to President Cristina Kirchner.

The lack of initiative of the Legislative in establishing a public debate on the presidential accounts and in judging them in due time, together with the continuous appointment of ministers proceeding from the Parliament and having little familiarity with the necessities of the function, suggest: (a) effective lack of coordination between the Legislative and its auxiliary organ; (b) disinterest in the external control, in the sense of lack of concern with the enhancement of the TCU's and AGN's capacity through the recruitment for the higher positions of people endowed with the necessary expertise to the adequate fulfillment of the constitutional mission. The double character implicit in the design of the external control in Brazil – associating technical analysis, by the auxiliary organ, and political appreciation by the Legislative – turns out to become, in reality, two redundant political controls, remaining greatly distant from the main reasons for the existence of a superior institution of control.

Final Considerations

Historically, Brazilian and Argentinean Legislative powers did not exercise, in a systematic way, the prerogative of external control over the Executive. The institutional changes that followed the re-democratization processes of the end of the XXth century, have considerably strengthened the exercise of horizontal accountability by the Legislative, endowing the involved organs with updated institutional designs.

The superior institutions of control, auxiliary organs of the Legislative power, obtained in both societies the necessary empowerment for the exercise of their constitutional mission. It has become clear the option for a more comprehensive scope of attributions, not limited to the control of procedures, as in the past, but oriented in the sense of the audit of performance. In Brazil, the economic efficiency becomes part of the criteria of performance verification; In Argentina, the constitutional text includes the control of public management, and the infra-constitutional legislation alludes to the issue of performance.

In Brazil, the annual control of the Executive's performance, through the appreciation of its accounts by the superior controlling institutions and their judgment by the Congress, was maintained by the Constitution and enlarged by the infra-constitutional legislation. In Argentina, such task acquired, for the first time, a constitutional status after being detailed by the ordinary legislation. This task is, effectively, the greatest moment of the external control, the moment when comes to an end the cycle started with the approval of the budget, and the horizontal accountability offers the citizenship subsidies for the vertical accountability.

On the other hand, the autonomy of the external control underwent considerable improvements. In Argentina, the Executive lost for the Legislative the monopoly over the recruitment of the Deliberative Body of the *Auditoría General de la Nación.* Besides that, the Constitutional Reform innovates when it confers to the major opposition party in the Congress the prerogative of indicating the AGN's President, what propitiates the incorporation of the opposition into the process of accountability and gives the control greater transparency and reliability. In Brazil, the monopoly that, since 1891, assured to the Executive the solitary nomination of the Tribunal ministers was extinguished. Now, the greater responsibility falls to the Legislative, with the nomination of two thirds of the members, i.e., six ministers, in addition to the approval of the other three. Of these, only one is chosen by the Executive with entire freedom, for the other two have to be chosen among the career functionaries of the *Tribunal de Contas da União*.

Notwithstanding the innovations that enlarged the scope of the external control and gave a greater power and autonomy for the auxiliary institutions, the performance of the external control is being, in a certain sense, disappointing. In both countries, the Legislatives did not favored a public debate on governmental performance for not judging the Executive's accounts in due time. In Brazilian case, the accounts are being appreciated by the Tribunal within the due constitutional time, but judged by the Congress with a considerable delay, what suggests an effective lack of coordination between the Legislative and its auxiliary organ. In Argentina, the *Auditoria* is not even getting to receive the reports duly appreciated in the legally foreseen dates, as emphasized its President, and only three rendering of accounts have been settled between 1993 and the present date.

The responsibility of the Legislatives concerning the recruitment for the higher posts of the *Tribunal de Contas da União* and the *Auditoría General de la Nación* has been frustrating as well. What prevails is the appointment of parliamentarians or other politicians with little affinity with the requirements of the arts and crafts of the controlling activity, indicating a lack of interest of the Legislatives in capacitating those technical organs with the expertise, professionalism and independence required by the adequate fulfillment of those superior controlling institutions' constitutional mission.

The statement of the AGN's President, Leandro Despouy, that "Argentina lacks a culture of control" may also be applied to Brazil.

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