Supreme audit institutions in search of accountability and performance improvement in regulatory utility agencies: a comparative analysis of oversight practices in the telecommunication sector regulators in Brazil and the United States in the last decade

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“The infrastructure liberalization and privatization that swept the globe in the 1990s were a significant departure from the previous economic consensus. This departure not only questioned the need for state ownership in these sectors, it also reexamined long-standing notions about natural monopolies and accompanying regulations” (Kessides, 2004:35. Reforming Infrastructure: Privatization, Regulation, and competition.

“The value of any exchange system is measured by the number of members of any community that are connected with it. If there are two systems, neither of them serving all, important users must be connected with both systems… Given the same management, the public must pay double rates for service, to meet double charges, on double capital, double operating expenses and double maintenance”. AT&T President Theodore Vail wrote in 1907, in a classic statement of the argument for a telephone monopoly. (Quoted in Foreman, 1991:176. Regulating for the future).

1. INTRODUCTION

This paper reviews performance auditing practices conducted by the Brazilian Tribunal de Contas da União (TCU) in a comparative perspective with the US Government Accountability Office (GAO) in the oversight of utility regulators. The objective of the review is to identify areas, issues and practices of possible collaborations for institutional capacity building between GAO and TCU in works of performance auditing of the utility regulators. It clarifies the concept and some critical issues about performance auditing as conducted by the two cases of study. It identifies exemplar works of both Supreme Auditing Institutions (SAI)¹ in the oversight of the regulation of utilities. It describes how the US public administration is in many important respects like its Brazilian counterpart. In this perspective, it is argued that on the one hand, the Brazilian SAI could very well benefit from insights of audit practices as well as of some issues that GAO has been developing in the area of performance auditing of utilities regulations. On the other hand, the Brazilian Supreme Audit Institution is trying to build a more systematic and systemic approach to oversee the regulation of utilities by identifying the main problems and the actions necessary to overcome them. This approach may also help other SAI’s to build a vision of the proper role of an oversight institution in this increasing area of concern of many National Public Administrations, namely, utilities regulation and its accountability environment, especially after privatization, good regulation and competition had been prescribed as remedy to improve a country’s infrastructure capacity in both healthy and developing economies.

This paper is part of a research carried out during the International Fellowship Program of the US Government Accountability Office, attended by the Brazilian SAI Tribunal de Contas da União between May and August of 2004 among other eighteen SAI’s. Before the course actually started in May 2004, the President of the Brazilian SAI agreed that TCU in the 2004 version of that program would like to benefit from it by learning “Lessons to TCU on how GAO conducts performance auditing studies in utility regulatory agencies”. The expectation from the course was then to learn about practices of performance auditing conducted by the US GAO, especially on how the SAI plans its studies, implements the field work, reports the audit findings and monitors the recommendations. The functions performed by TCU (Brazilian SAI) include the external control of regulatory agencies in the utilities sector. Actually, The Brazilian SAI has a program² that aims to develop and consolidate the operational capacity of TCU to undertake external control work in this area. In this context, the paper also narrates some facts on how a SAI can better understand and exchange practices – in a policy

¹ This is the name by which external control entities are named by the International Organization of Supreme Audit Institutions, which has almost 200 country members worldwide.
² This program is partially financed by the IADB – 2002-2006.
learning transfer context - from one country to another in the area of performance auditing, using some GAO and TCU reports in the utilities sector more specifically as cases of study.

This paper is based on the classes delivered during the program, interviews and meetings attended during the stay in the GAO, as well as on research on GAO and TCU reports and literature about public management in the US and Brazil and performance auditing among Intosai members countries. Finally, it is fair to highlight that this paper benefited from a final document presented to the US GAO and to the Brazilian TCU as a strategy to build more collaboration capacity among Intosai members’ countries in general and between these two institutions, specifically, in the area of regulatory oversight. The proposals and ideas presented in this paper, however, are mainly the author’s own perspective about this policy issue. The analysis provided here intends to be just an initial framework and an incentive for more comparative research oriented to solve contemporary public administration problems faced by National Public Institutions and relies on ideas and ideals of practical reasoning of policy matters. In this present case, the discussion of the proper role of Supreme Audit Institutions in search of accountability and performance improvement of utilities’ regulatory agencies.

2. ARGUMENT

This paper is an attempt to provide an argumentation about recent public management policies of audit and evaluation conducted by Supreme Audit Institutions (SAI) in utility regulatory agencies. Such policies seem to be reflecting two doctrines. A first one is that a public organization of external control of the bureaucracy should balance and integrate the pursuit of two types of accountability of such agencies, namely, compliance accountability and performance accountability. This paper relies on the performance accountability stream of SAI practices. A second argument is that - on the one hand - a good design of the regulatory system should guarantee that agencies have degrees of independence as a way to fulfill their mandates, but should - on the other hand - be reviewed not only by compliance with norms and regulation, but also be assessed on their performance, including those related to the agencies regulatory goals.

By providing such argumentation, this study aims to fulfill three outcomes. A first outcome is to provide a review of some practices conducted by the Brazilian Tribunal de Contas da União (TCU) and US Government Accountability Office (GAO) in the utilities regulatory agencies. The issue here is to inform to whom and to what extent are those agencies accountable for in both National Public Administrations.

Secondly, the paper identifies that a choice of Supreme Audit Institutions to conduct performance audit in regulatory agencies is a political phenomenon. As such, the paper should explain facts and events (Elster, 1989). An example of an event related to regulatory reform is the creation of many regulatory agencies in Brazil after privatization during the 1990’s. Another event relates to the Telecommunications Act of 1996 as a first major overhaul of telecommunications law in almost 62 years in the United States. A fact is that SAI’s are increasingly shifting their type of control over the bureaucracy - including regulatory agencies - from compliance audit to performance audit. This fact is a relevant policy issue for this strategy paper. Since it involves many countries and as a political phenomenon, analysis of this fact should engage discussion in a comparative perspective (Sartori, 1994:15). In this sense, a comparative analysis between the Brazilian SAI and the US SAI should help built explanations and evaluation of good regulatory systems designs and their control environment. The issue here is to elicit the proper role of Supreme Audit Institutions as a main actor in the regulatory arena.

Finally, practices in this paper are narrated as a way to bring lessons about performance auditing as conducted by both SAI – in a policy learning transfer context - from one country to another in the area of oversight of regulatory agencies. The issue here is to assess the extent and the ways accountability of regulatory agencies as conducted by Supreme Audit Institutions might be learned from one country to another.
3. INSTITUTIONAL FACTORS COUNTING FOR THE DEVELOPMENT OF PERFORMANCE AUDITING IN THE UTILITY REGULATION SECTOR

The main objective of this section is to analyze the institutional factors that could affect the extent that the Brazilian Tribunal de Contas da União and the US Government Accountability Office might learn from each other’s practices in the oversight of regulatory agencies, using some reports and practices of both institutions as benchmarks cases. This section also analyses the main issues related to the implementation of performance auditing methods and techniques among Supreme Auditing Institutions.

There are external forces promoting the growth of performance audit, many of which are evident throughout Intosai member countries. These forces refer mainly to fiscal stress, expenditure cuts, changing environment, political and social pressure for a more openly accountable government, and increasing expectation on quality government services (Shand and Anand, 1996). From this perspective, factors counting for convergence in audit and evaluation practices in SAI’s seem to be related to fiscal crisis, budgetary constraints, and public disenchantment with government performance (Rhodes, 1997: 42). Such shift in ideas and changes in the environment a government operates (Hood, 1994) have been challenging the role of the welfare state, towards a regulatory state (Majone, 1994, Loughlin and Scott, 1997; Hood et al.) 1999). Performance audit might be responding to these transformations as a ‘mirror’ image (Hood et Al. 1999: 07) of a change in government operations and the issue-images created about what is good and responsible government (Aucoin, 1995).

Albeit a convergent transformation in the oversight process towards performance audit seems to be increasing among democratic and market-oriented countries, a dissimilar pattern of performance audit, however, is also verifiable. The most important dissimilar pattern is the conduction of works questioning policy content. In this paper, policy content stands for prospective (ex-ante) analysis and also SAI reports addressing the effectiveness of a policy issue in terms of its own objectives.

It is argued in this paper that the US Government Accountability Office is more able to conduct performance audit questioning policy content issues on the regulatory area because it is embedded in a fragmented non-monolithic policy making environment and responds directly to a strong client – the US Congress- that allows GAO to assess effects of public policies in a more deep analysis than is usually the case among other Intosai Countries members. On the other hand, the UK National Audit Office, for example, as the majority of Intosai members, faces more difficulties to question policy-content issues because it oversees a disciplined and integrated policy community of rulers in the UK.³

In this concern, it is argued that it would be a good choice for the Brazilian SAI to broaden its technical partnership with the GAO. This choice should not expose its capacity building projects with the UK, because this ongoing collaboration is positively influencing TCU’s practices and creating good quality discussions among Intosai members. However, TCU should learn other techniques and methods of control in the utility regulation area as well as address other issues in future audits. This vicarious learning process should be based on exemplars reports delivered by GAO, contacts with GAO experts and continuous exchange of information between the two institutions in the many aspects of the utility sector, since the Brazilian National Public Administration, as its US counterpart, is more likely to accepted policy content analysis and recommendations from the SAI.

TCU should also build a stronger relationship to Congress as a way to increase the likelihood of effectiveness of its recommendations and not be questioned about its own legitimacy to conduct some performance auditing works. Nonetheless, a stronger relationship with Congress should not jeopardize TCU own independence and guarantee that it is still able to conduct the majority of the works by its

³ This institutional factor may not be the main reason why other SAI are not able to do more effectiveness-oriented audits. Other factors may be the institutional capacity of SAI, public management culture imperiling a more performance oriented approach to audit, lack of mandates, lack of demand from the legislature for performance information about public programs.
own initiative, what is not apparently the case of the US Government Accountability Office. In this perspective, it is fair to claim that TCU should also seek collaboration with other strong stakeholders, just like the International Organization of Supreme Audit Institutions, the World Bank and The Interamerican Development Bank, to advocate clearly the proper role of a SAI in modern democracies. SAIs should be seen as important stakeholders that help a government to achieve the proper accountability and improved performance in the public sector. Moreover, SAIs help governments to address proper issues of good governance, including in the regulatory arena. In short, Supreme Audit Institution’s role worldwide has evolved from an accounting perspective to a more governance, performance improvement and accountability approach to policy problems. GAO and TCU audit practices in the regulatory arena seem to be exemplar cases of this development.

The US Public Administration and the role of the Government Accountability Office (GAO) compared with the British National Audit Office (NAO)4

In the UK, there is a complex alliance between the Treasury, the Parliamentary Accounts Committee (PAC), and the Comptroller and Auditor General (C&AG)5. Within this alliance, the boundaries of state audit and the role of C&AG are constantly moving (Dewar, 1991). Such alliance does seem to indicate that the role of NAO should stop closer to policy-content issues and rely on other forms of performance audit. Works based on criteria of program effectiveness conducted by the National Audit Office are few. They sum 22 in the period of 1993-1995 (Pollitt et al., 1999:98). Such audits are not supposed to question the merits of government policy (Barzelay, 1997: 398). NAO’s Reports that tried to question government policy suffered serious criticism from Whitehall mandarins. In the beginning of the 1990’s, some reports, such as the one about the sale of the Rover Group, raised issues on government policies’ merits. Alarmed at this development, various permanent secretaries issued warning in 1991 about the way NAO was entering the policy arena and becoming political (The Independent, 4 February 1991, quoted in Glynn, J et al., 1992: 56). The prevailing thought among policy rulers in the UK is that if auditors challenge the quality of democratically determined policy, departments are justified in drawing attention to it. ‘But, such challenges may go unheeded if departments object simply to prevent inconvenient intrusions’ (Ibid.). In spite of the spread of the Labour rhetoric of open-government, the policy-making process within the Whitehall is still full of secretiveness (Kellner and Hunt, 1981:264). The level of influence of civil service mandarins as advisors of ministers is still high. ‘Lateral’ entrance does not seem to have challenged the majority of mandarins in the top positions. Most ‘Outsiders’ were appointed for executive agencies, but they only count 25 percent of the agencies’ staff. ‘The ‘core’ executive is a small community concentrated in a half a square mile of central London. This apparatus is no ‘government of strangers’. It is a ‘village’, small enough for everyone to know each other well and to be preoccupied with pursuing and maintaining their reputation (Hood and James, 1997). The emanation of policy advice comes from this insulated territory of mandarins. British politics is a compound of a mass that implements policy and some privileged that say how it should be done. Reaching the summit (Barbaris, 1996:140) and being able to give advice as a permanent secretary in the UK Government is a process that generally takes a lifetime career. From many Oxbridge younger recruited, few will reach

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4 I chose the UK National Audit Office to compare to the US Government Accountability Office because the first is leading good practices related to the regulation oversight and also has contributed very much to the improvement of the Brazilian TCU oversight practices in performance auditing.

5 Concerning the organisation of NAO, the UK is a much-personalised model of external control. Powers have been vested in an individual General Comptroller from the top civil service assisted by an office appointed by him. Legal responsibility is vested in him alone. Decisions on what is going to be audited rely on him alone (with some interference from the PAC). He is also responsible for reporting findings to the Public Accounting Committee himself. This form of organisation reflects the highly personalised traditions of government in the UK.

6 The British Civil Service recruitment system is still biased by a majority of successful candidates from Oxford and Cambridge Universities.
this status. Once there, they insulate themselves (ibid. 143).

It is a mistake to think that it is easy to measure the relative power of ministers, civil servants and outside pressures (Dowding, 1995:122) in the policy-making process in the UK. However, in the Whitehall system the cohesion of the ruler community avoids interventions in the policy-making process from ‘outsiders’. The National Audit Office auditors are strangers in this ‘Village’, and, therefore, are not welcome to express opinion on policy-content issues. In fact, they face strong restriction to address policy content issues in their audit works.

Unlike Britain, Public Administration in the United States is fragmented in both governmental and bureaucratic levels. Arguably, power on policy-making process is divided between the executive and the legislature in an unclear design. The complexity of the policy-making geometry of Washington is metaphorically characterised as the ‘iron triangle’. In this geometry, interest groups, congressional committees and subcommittees, and executive agencies are tied symbiotically together, ‘controlling specific segments of public policy to effective exclusion of other groups or government authorities’ (Salisbury et al., 1992).

The executive is highly fragmented inside. Departments and sub-departments may have traditions and policy stances that the president should respect if policy objectives are to be achieved (Peters, 1995:18). These stances, however, are a compound of career civil servants ‘think tankers’ and ‘outsiders’ appointed by the president. This fragmented structure within the executive level is mirrored in the many Congressional committees and sub-committees. Institutional politics in the United States is ‘government against sub governments’ (Rose, 1980).

In such fragmented environment operates the Government Accountability Office (GAO). Its main function is to assist the Congress in its legislative oversight of the executive branch. The vast majority of GAO’s work is audit and evaluation but it also has other responsibilities, including prescribing accounting standards for the entire federal government in conjunction with the Office of Management and Budget and the treasury. GAO is formally independent of the Congress. The Comptroller-General is appointed for a fixed term of 15 years.

The work of GAO is unconstrained because the executive policy-rulers are not coordinated enough to oppose consistently to external evaluation of their programs. Moreover, the Government Accountability Office has built a strong client relationship with Congress that has permitted less questioning about performance audit and evaluation it might conduct. GAO has evolved into an effective policy analytical and advice organisation for Congress (Rist, 1990). In fact, almost every GAO engagement is initiated by a congressional request.

GAO exists to support the congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the benefit of the American people. The core values of GAO are accountability, reliability and integrity. GAO produces high quality reports, testimonies, legal opinions, and other product and services that aim to be timely, accurate, useful, and clear. The Us Government Accountability Office is the government’s accountability watchdog. Its highly trained evaluators examine everything from missiles to medicine, from aviation safety to food safety, from national security to social security. GAO is an independent legislative branch agency. GAO investigates on behalf of Congress. GAO serves the public interest by providing Members of Congress and others who make policy with accurate information, unbiased

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7 To be a mandarin in the British policy community, the stages are summarised as follow: Stage 1: administration trainee; Stage 2: After two years the best Ats are ‘fast-streamed’ and are promoted to Higher Executive Officer (A). The difference between an HEO (A) and other HEOs is not simply – or even mainly – the difference between glamour and routine: it represents the decisive division within the Administration Group between the policy-making ‘elite’ and the policy-implementing mass. Stage three: Principal of an office; Stage four: assistant secretary; Stage five: Open structure.

8 It is claimed by many GAO experts that those requests are highly influenced by GAO perspective, since the organ has more technical policy expertise to address proper questions to policy problems. This claim is very plausible, but the level of this influence, however, is not a matter investigated for this paper.
analysis, and contractive recommendations on the use of public resources and the operations of government programs. The GAO also aims to serve as a model of organizational efficiency, effectiveness and accountability in the federal government. GAO examines the use of public funds, evaluates federal programs and activities, and provides recommendations and other assistance to help the congress make effective decisions. GAO helps the congress decide how to allocate federal funds and oversee the effectiveness and efficiency of government operations.

Since GAO was established in 1921, its approach to government accountability has four phases:

1. Checking vouchers (1920-1940)
4. Improving government performance and accountability (after the 1990s)

In fact, a recent law has changed the name of the General Accounting Office to Government Accountability Office, as a way to make easier to the general public understand the proper GAO function in Government.

The Brazilian Public Administration and the role of Tribunal de Contas da União in the regulatory oversight process

Like the US and Unlike Britain Public Administration, the Brazilian National Public Administration is extremely fragmented, in both the political and the bureaucratic levels. Although there is a strong emphasis in the executive branch in the policy making process, the powers are divided in an unclear way in the two branches. The executive itself is extremely fragmented. Moreover, the ministries have not yet created a strong community of policy advice, including the ministries of infrastructure.

In this fragmented environment operates the Tribunal de Contas da Uniao. Its main function is to assist the National Congress in controlling the federal public administration and watching over the sound and regular use of public funds. It is responsible for the external audit of the country and its agencies in the three branches of government. There is a high level of independency of TCU from any other public administration entities, because it has a mandate to carry on his audits by its own initiative. After the new constitution in 1988, TCU has spread its control practices and included operational audits in his review portfolio. Since then, a lot of efforts have been put into practices to increase the institution capacity to perform works on program evaluation, operational audits in many areas.

Nowadays, TCU is known as a distinguished body of excellence of sound policy advice and has spread good practices in regulation and performance accountability, including in the control of regulatory agencies, as it is going to be exposed in this paper. The next section will try to clarify the concept of performance auditing as practiced by SAI. Once clarified this concept the paper addresses the question of performance auditing in regulatory agencies.

Performance Auditing: an evolving concept

Performance audit is a government review process that covers a broad range of activities (Shand and Anand, 1997:58), which can be approached by many ways. An institutional approach to performance audit is a quite useful way to show empirically what institutions and actors actually do when they say they are conducting performance audit. Some serious works in this area (as Barzelay, 1997; Pollitt et al., 1999) have been indicating an inexorable move among Supreme Audit Institutions of many countries towards this kind of government review mode.

Such institutional analysis of performance audit demonstrates that it is a much more complex mode of review than traditional forms of compliance accountability. According to the International Organisation of Supreme Audit Institutions (INTOSAI), performance audit embraces such concepts as:

1. Audit of the economy of administrative activities in accordance with sound administrative principles and practices, and management policies;
2. Audit of the efficiency of utilisation of human, financial and other resources, including examination of information systems, performance measures and monitoring arrangements, and
procedures followed by audited entities for remedying identified deficiencies; and
3. Audit of the effectiveness of performance in relation to the achievement of the objectives of the
   audited entity, and audit of the actual impact of activities compared with the intended impact.
   (INTOSAI, 19992:19)

Performance audit and financial or regularity audit differ in the way they are managed within SAI’s. The traditional model of financial audit consists of a repeated annual cycle of “checking the books”, while performance audit is usually carried out as an individually tailored project (Pollitt et al., 2000:16). Performance audit seems to involve more actors and reach broader areas within public administration and external constituencies than traditional compliance audit. An example is the policy-making arena, when conducting program effectiveness audit or program evaluation. The impact of audit reports in public opinion and repercussion in the media tend to increase in works regarding managerial and effectiveness issues about government bodies’ operations. Finally, the process of performance audit is usually longer compared with compliance audit, because it involves more methodological issues and is constrained by more actors.

The criteria and methods applied by SAI’s are also a shift from traditional auditing procedures of gathering, analyzing, and disseminating information. Financial audit is a system rich in formal rules and technical procedures (Power, 1997:39). Some authors argue that financial audit will become an even more proceduralized regulatory compliance product, narrowing the opportunities of professionals to make instrumental judgments (Hatherley, 1995). On the other hand, performance audit has increased the interface of audit with other fields of knowledge, like general management, policy analysis, and public management.

Barzelay (1997:392) identifies seven types of performance audits, as follows:

1. Efficiency audit (identify opportunities to lower budgetary cost of delivering program outputs);
2. Program effectiveness audit (assess impact of public policies; evaluate program effectiveness);
3. Performance management capacity audit (assess capacity to achieve generic goals of economy, efficiency, and effectiveness);
4. Performance information audit (validate/attest to accuracy of information provided by organisations);
5. Risk assessment (identify major risks of program breakdown and their sources);
6. Best practice review (formulate sector-specific standards of best practice; reveal relative performance of sector participants);
7. General management review (assess capacity of organisation to deliver upon its mission and policy mandates).

The first four cited are considered main types of performance audit, according to the author. Albeit he does not say explicitly how he has reached such conclusion, a reasonable guess would be that it is because the other types are less practiced by SAI’s.

Contrasting with literature in the field and with Intosai Standards, the definition of the GAO new yellow book encompasses all types of audits by an SAI as performance auditing, but financial audits and attestation engagements. It defines performance audit as an objective and systematic examination of evidence to provide an independent assessment of performance and management of a program against objective criteria. As well as assessments that provide a prospective focus or that synthesize

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9 Such definition of performance audit contrasts with the definition of regularity audit because the latter emphasizes attestation as a main activity while performance audit embraces more ‘in-depth’ studies about the functioning of the public sector as a whole. Regularity would be related to financial accountability, audit of internal control and internal audit function, audit of the probity and propriety of administrative decisions, and the like.

10 Public policy analysis is a well known tool of planning in the public domain (Friedman, 1987:151); Friedman’s economic model of policy analysis puts this discipline as a supplier of reports and advice to policy makers (1987:139).

11 The Yellow Book is issued by the GAO and corresponds to the Generally Accepted Government Audit Standards in the United States.
information on best practices or crosscutting issues.

The yellow book explicitly states that performance auditing should include:
1. Assessing program effectiveness and results
2. Economy and efficiency
3. Internal control (management operations)
4. Compliance with legal or other requirements
5. Providing prospective analyses, guidance, or summary information.

The concept of performance auditing for this paper is narrower than GAO concept and does make a
difference between compliance auditing and performance auditing. Nonetheless, the case for including
prospective analyses as a type of performance auditing is a key contribution the US Standards have
given to the field of discussion.

The figure below shows the process of performance auditing as a continuously learning process since
information provided by performance auditing may influence the policy cycle as a whole.

Figure 1. The process of performance audit

The public management policy analysis stream of performance audit of regulatory agencies
New Public Management has been spreading a new mentality stressed on result-oriented approaches to
governmental routines and operation. Classical oversight systems relying only on financial statements

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12 The framework provided here mainly benefited from an earlier study conducted about performance auditing in Intosai
member countries (Gomes, 2001).
and compliance to norms seem to have been giving insufficient responses to this new paradigm. Accordingly, the over legalistic ethos of these classical oversight systems may have incorporated a new one, relying on a “management accounting” (McSweeney, 1994) approach as an ideal of good management practices within public sector business.

The novel way Supreme Audit Institutions are attempting to oversee governments, in a more specific perspective of audit and evaluation stressing on managerial good practices, output/outcome achievements and impacts, finds similitude within reforms under the rubric of the New Public Management13. In this vein, explanatory arguments14 about NPM might be serviceable tools to approach SAI’s policy arguments in favor of a performance accountability orientation to government. A new audit policy paradigm within Supreme Audit Institutions stressing on results in the name of performance accountability and enhancement of management practices is surrounding governmental evaluation and review practices. Some of them seem to be more prone to drastically change the way public bureaucracies are made accountable; others might be resisting moving quickly from the existing paradigm. All governments, however, seem to face some administrative contingencies inherent to public sector imperiling a full development of a performance orientation, including performance audit.

From the auditees’ standpoint, the classical oversight system by which they have been reviewed does not provide them a good managerial tool, either. Arguably, the stories of achievement (Corevellec, 1997) of public bodies are not being perfectly reflected on the financial statements by which they have been overseen by their political masters. The issue, accordingly, does not lie only on whether governmental bodies should or should not be overseen by performance achievements. The issue is also, on whether outputs and outcomes may be well defined or not. In fact, how to negotiate an auditable environment and construct a knowledge base (Power, 1996) in both, Supreme Audit Institutions and public bodies they oversee, about performance audit are the critical points. Moreover, aligning vision, mission, and outcomes (organisation strategy) with the corresponding objectives, targets and outputs (critical performance variables) (Kaplan and Norton, 1998; Jackson, 1993:12) and how to measure them in the public sector context (Boyle, 1989) are key issues within performance accountability.

This paper also argues that in the regulatory environment is the most appropriate one for a performance-oriented approach to audit. First, the managerial freedom and delegation powers to regulators should be preserved, so a very compliance oriented external control would tend to restrict the more modern approach that regulatory agencies are trying to build into public management practices. The issue to be pursued by SAI, accordingly, should concentrate on key contested issues in the domain of performance accountability, rather than perpetuating an over-legalist control approach to regulation. It highlights characteristics of a well-designed performance-oriented system, which implies that managers become “committed to and accountable for achieving the organisational vision”(Kaplan and Norton, 1998: 249)15. In the public sector, reforms regarding the matter of performance improvement and accountability enhancement followed two strategies: managerial and contractual. Therefore, it should be reasonable to distinguish a contractual approach (Aucoin, 1995) from a managerial one (Schick, 1996) in the context of explanations of public management policy reforms, including in the provision of utilities and its regulation. It links these approaches, respecting the structure of the

13 It is worth noting that even countries that have been avoiding some ideas within NPM (such as France, the Netherlands, Finland and Germany) are adopting certain types of performance audit (See Barzelay, 1997:395 and Pollitt et al., 1999). For the German Federal Court of Audit experience on performance audit, including FCA’s advisory and pro-active role in government decisions see Zavelberg, G, 1997. Contrary wise, in New Zealand, a benchmark NPM case, the Office of the Auditor General does not conduct some types of performance audit, as program effectiveness audits (Barzelay, 1997:398)

14 Explanatory argument (Dunn, 1984) is a mode of management policy argument (Barzelay 2000:98) which claims are based on arguments from cause. “Information is carried to claim on the basis of assumptions about the presence of certain generative powers ("causes") and their results ("effects") (Dunn, 1994:101).

15 A performance-orientated system is considered well designed when good management practices of planning, targeting, aligning resource allocation, and strategic initiatives, and budgeting are respected.
argument here defined, to the paper policy questions. The paper appraises whether public management literature applied to performance auditing of regulatory agencies is able to resolve, or if it is even compatible with, these issues, considering contingencies in the public sector (Wilson, 1989, Gregory, 1995); knowledge of governmental processes and institutions in the regulatory environment (Moore, 1995; Kessides, 2004, Guash, 2004 and Hood, 1998) and regulatory good practices applied to the accountability system (Stern, 1997; Gomes, 2003).

The Contractual model of performance enhancing accountability in the regulatory environment

Supreme Audit Institutions seem to be certain about the necessity to incorporate (or consolidate) performance audit as a line product of their review portfolio, including regulatory agencies. Executive governments, in their turn, seem to lack of resistance to have their activities reviewed through this perspective. A plausible reason for this convergence of ideals is that as some governments have been creating new policies and implementing contracts (output/outcome agreements) between parliament/ministers and head of agencies. Those policies and contracts should be checked against their results. Therefore, a third actor, Supreme Audit Institution, is being called upon to be part of a principal-agent relationship between parliament and ministers, in on hand, and between ministers and head of departments/executive agencies, on the other.

Principal-agent theory applied to the role of Supreme Audit Institution in the regulatory arena

A prima-facie interpretation of a SAI decision to oversee government by results is that this latter may be facing a principal-agent problem. The need for principals to monitor agents gives rise to audit (Power, 1997:16). Contracts or agreements between ministers and their subordinates should be audited. Because of the remoteness and complexity of the subject matter of auditing, principals are unable to do this monitoring by themselves and require the skills of an auditor (Flint, 1988).

Although Principal-agent theory is a strong explanation for the rise of performance auditing practices among SAIs, some problems still need to be resolved. They are mainly related to what, if any, is the ideal model of functioning of supreme audit institution to oversee regulatory agencies. The paper highlights that there is not a one-fits all approaches to control of regulation. As stated by Kassides (2004:17), for regulation to promote welfare by facilitating investment, innovation, and allocative efficient pricing, its institutional design and substantive content must be consistent with country circumstances – particularly the country’s size, institutional endowments (including checks and balances), technical expertise, auditing technologies, fiscal condition and tax system efficacy, and the economic characteristics of its industries. The same rationale applies to the control of regulation.

Performance accountability faces many problems to be resolved in government (see Gomes, 2001 and Barzelay 2000, chapter 3). Those problems include how to measure the public value of pubic agencies (Moore, 1995), how to determine the culture values in the public sector (hood, 1998). A more specific problem is how to assess outputs and outcomes achievements of regulatory agencies against their policy objectives and contracts, which will be discussed further in the next section.

Problems of performance measurement and output/outcome observability in regulatory agencies.

A proviso in the argumentation of a performance orientation approach to audit would be that outputs and outcomes are always measurable or observable. Wilson’s (1989) contingency theory demonstrates, however, that bureaucracy is not a monolithic phenomenon. Output and outcome are not always observable (see figure 2 bellow). In fact, in a singular kind of agency (production), both output and outcome are observable. Procedural agencies may have their outputs observable, but not their outcomes. Craft agencies may have their outcomes observable, but not their outputs. In coping agencies, neither outcomes nor outputs are observable.

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16 As will it be seen later, not all types of performance audit are conducted by some SAIs. Explanation for variations can be found in Barzelay, 1997:394-398 and Pollitt et al. 1999:213-219.

17 Empirical evidence among OECD countries indicates some difficulties in determining levels of output and outcome in the Public Sector. An OECD publication states that: ‘Responding to these views requires a strong push on improving performance measurement, so that the benefits in improved performance which can be achieved from the reforms are
Empirical evidence suggests that a performance-orientation exclusively based on a contractual model is not quite adequate for the public sector. Problems as service “creaming” (Corevellec, 1997), over compliance to narrow goals (Schick, 1996:24-26; Hood, 1998:218); and costs of implementation (Thompson, 1993:305), at the expense of long-run achievements, are claimed to be common. Such analysis of a contractual model approach to performance-management may be reflected in the way SAI’s have been conducting performance audit. In fact, empirical research in the types of performance audit conducted by SAI’s has identified that only Finland, New Zealand and Sweden, among the OECD countries, conduct performance information audit (Barzelay, 1997:395). An explanation for this low commitment of SAI’s in pursuing performance information audits may be the difficulties they might be facing in identifying good levels of indicators that would consistently reflect the outputs and outcomes achievements of the auditee’s work. Such difficulty may be explained by the own nature of the public sector where, according to Wilson’s typology, only in a singular kind of agency, production, both output and outcome are observable.

Regulatory agencies are not production agencies; they are somewhere in between Craft, Procedural and Coping agencies. The appropriate approach of performance accountability should not rely, then, on the checks of contracts between ministers and head of agencies in terms of output outcome agreements. In demonstrated, as far as possible. But at the same time, the inherent complexities and limitations of performance measurement in the public sector must be recognized, so that performance information is used in an appropriate and positive way’ (OECD Performance Management in Government, No 3 1994:92)

18 The author explains this low frequency as follow: ‘ the explanation seems to be that performance information audits are conducted where governments have made doctrinal commitments to results-oriented public management and are in the process of building systems and procedures for oversight and budgeting that are rationalized by this idea (Sweden)’. (Barzelay, 1997:396).
fact, the effectiveness of such contracts is highly contestable given the own nature of a regulatory agency. There should be a more comprehensive understanding of the role of Supreme Audit Institution when carrying out performance auditing, it is not at all the checks of performance indicators (outputs and outcomes), it is rather the design of good criteria and assess sound management regulatory policies as conducted by regulatory agencies. Moreover, the role of an SAI is mainly to help such Institution to improve their performance through the application of those good practices. A more managerial model of performance accountability enhancing responsibility might be a good answer for performance auditing. The next section provides some ideas on such improvements and the difficulties faced in a managerial approach. It is argued that the works done by SAI go beyond this two model of performance management; they also rely on a more policy analytical approach to regulation.

The managerial model of performance enhancing responsibility

Schick (1996) provides a critical analysis about the excessive emphasis in the contractual model of public sector reform. Outputs and outcomes achievements should be used rather as a managerial tool for improving the process of public policy decision making than for accountability itself, he argues. From this perspective, the main element of control is an empowered management culture (Roth, 1996:253). In fact, managerial issues are being highly prioritised among SAI’s conducting performance audit. In the Dutch Algemene Rekenkamer (Netherlands’ SAI), performance audits using good management criteria in 1993-95 are 76 against 29 relying on economy, 4 on efficiency; and 3 on effectiveness (Pollitt et al., 2000:96). The National Audit Office conducts good management performance audit-type in many of its value-for-money studies. This type of performance audit has increased from 28 in 1983-85 to 43 in the period 1993-1995. It is far the most used criteria in NAO’s value-for-money studies (Pollitt, et al. 1999:98). Albeit the SAI’s own representative institution, INTOSAI, has been stressing that evaluating the three E’s is the main reason for a SAI to conduct performance audit, in practice, at least two of these ‘Es’ (efficiency and effectiveness) have been much less frequently investigated than issues of management practice and procedure (Ibid.103).

A managerial approach is less rigid about performance measurement than a contractual approach is. Arguably, the information gathered from performance systems is used to give direction rather than to punish or to reward. It is a managerial planning tool rather than a control tool. On the other hand, the contractual model seems to be superior to the pure managerial model in terms of clear accountability assignments to professionals. Some works of SAI in regulatory agencies have been addressing managerial issues. However, it should be stressed that the craft of performance auditors (see figure 3) in the oversight process is not only find good management practices. As it is going to be seen it reaches areas of welfare distribution, competition, good governance, good regulatory design and other policy oriented issues.

Performance auditing in regulatory agencies in the cases study for this paper demonstrate that this is a new area of expertise and includes aspects of audit practices, policy analyses, law, public accounting, program evaluation and management disciplines. Furthermore, the knowledge of the industry sector as well as Regulation, as a discipline, is focus of the study.

Beyond the contractual and managerial pure models

As figure 3 bellow illustrates, the craft of performance auditors puts them sometimes in antagonistic positions. Arguably, as a public accountant or as a judge/magistrate, the performance auditor should be in a high relational distance (Hood et al., 1999: 60), so that independence of the oversight body would not be challenged. On the other side, as management consultants and policy analysts this relational distance tends to decrease, since it is rather a mutual work than an oversight in terms of comptrol (Ibid: 45).
Performance audit may be shifting to other kinds of control beyond the conventional process of oversight. Hood et al. (1999:48) use the term ‘inspector-free’ controls to refer to modalities of regulation inside government that do not resemble the traditional ‘inspector style’ of gathering information from a position of authority. The mixed models of control of oversight with mutuality; and oversight with competition seem to be examples of such shift. A SAI working close to the auditees in setting good management practices seems to enhance control by mutuality. When looking across sectors to identify good management practices and disseminating and enforcing them, SAI’s may be practicing a control by benchmark and competition. This latter practice is well known by the so-called regulators of utilities (Baldwin and Cave, 1999:243).

It has been observed that coping and craft agencies are not quite suitable for types of audit stressing output/outcome achievements. Regulatory agencies are quite suitable in this kind of agencies. In this perspective, it is argued here that if concepts of impact audit and equity audit are put on the scene, models of performance audit might shift even closer to methodologies within policy analysis (Dunn, 1994). It has been argued that a new twenty-first-century ‘interdiscipline’ combining the best features of audit, evaluation (Leeuw, 1996:59), and management is likely to emerge as regulatory agencies inside the state, in general, and SAI’s, specifically, shift from an oversight ethos to a mutual and competition ethos when conducting reviews in the public sector in a performance-oriented perspective. Much of the work conducted by the two SAI in this study, for instance, fits in this new perspective, because they seek rather to introduce good practices and assess governance and equity issues rather than check output/outcomes after-the-fact results. In this sense, performance auditing works in regulatory agencies are good examples of the development of this new discipline.

On the one hand, as much as SAI’s express value-judgments about policy-content, they might be more exposed to criticisms, especially in political systems dominated by a strong and insulated policy-maker community, as in the UK. On the other hand, as good governance and good policy practices are seen as key issue for a better public sector, SAI are in a position key role to play the best contribution in the history of those institutions. In fact, if these institutions resist moving to this new paradigm it is likely

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19 Regulating inside government requires three essential methods: setting standards (a ‘director’), gathering information (a ‘detector’) and modifying behavior (an ‘effector’) (Dunsire, 1978: 59). The oversight process is necessarily exercised from a position of authority. On the other hand, competition, mutuality and contrived randomness does not necessarily need a ‘physical’ inspector, and, therefore, are considered ‘inspector-free’ methods of control. (Hood et al., 1999: 48).
they will become obsolete and seen as imperiling good government.

As impact audit is implemented to assess effects of public programs, policy and organisations, beyond economy, efficiency and effectiveness, constraints on analysing and helping to improve performance of coping and craft agencies might be relaxed. Impacts are the ultimate effects of a project, programme, or policy; they represent the changes in gross and net values, which have been promoted by the implementation of a policy, either alone or in combination with other activities. Impacts can include such abstract notions as quality of life affected by training schemes, crime prevention, and housing programmes (Glynn et al. 1992:56). The works some SAI’s, like the GAO, NAO and TCU, are implementing in the regulation policies do show that a more comprehensive role in the policy arena is being played by those institutions.

If a SAI is prone to conduct equity audit, it should use a criterion according to which an alternative recommendation has resulted in a just or fair distribution of resources in society. Alternative criteria of social equity include those of Pareto, Kaldor-Hicks, and Rawl (Dunn, 1994:329). This instrument of equity assessment distribution is also used by regulatory agencies in pursuit of social regulation (Prosser, 1997). On the one hand, this would require a more independent SAI that would contribute to social justice, and equity in the distribution of goods in society. On the other hand, a more powerful relationship with clients, such as legislature, executive, and external constituents should be built. These requirements, however, seem to be in tension, because a closer relation to clients may lead to a less independent opinion.

Performance Auditing addressing regulatory management policy issues: exemplar cases

The remainder of this section is dedicated to describe the proper role of a SAI when carrying out the function of oversight of regulation by performance. It is argued that Supreme Audit Institutions have a key role for the sustainability and improvement of a sound regulatory regime. The US and Brazilian cases are exemplars in this area of oversight. The latter is trying to build a more systematic approach to the regulatory oversight; the former has created the conditions to advice Congress on sound policies in the regulatory arena.

The Role of Supreme Audit Institutions in the Regulatory Arena

Regulation activity is rooted in the power consigned to states to intervene in the relationship between suppliers and consumers. Regulation of the utility industry activities can be characterized as a form of control exercised by government “over prices, safety, and quality of services” (Baldwin and Cave, 1999:03). Systemic privatisation (Feigenbaum & Henig, 1994:200) and attempts to liberalisation in different times brought to the scenario of the utility sectors a new regulatory regime broadly similar in both cases.

In Brazil regulatory agencies were created for each key utility industry. The Telecommunication sector is a remarkable example of such transformation. The facts of the reform in this sector happened as follows: In august 1995, the constitutional amendments took place. In July 97, Congress approved the general telecommunications law proposed by the executive branch. In November 97, the regulatory entity – Anatel was created. In April 98, the cellular telephone licenses – B Band was approved. Finally, In July 98 Telebras and its subsidiaries were privatised and in November 98 the Telebras “mirror” licenses (duopoly) were operating. Other Regulatory agencies were created in the same period in each key infrastructure sector: Agência Nacional de Energia Elétrica (ANEEL), for electricity and Agência Nacional do Petróleo (ANP) for oil and gas. After in 2000 other agencies were created for transport, namely, Agência Nacional de Transporte Terrestre (ANTT) and Agência Nacional de Transporte Aquaviário (ANTAQ).

In reference to regulation of utilities, Prosser argues that the legislative mandate for regulation would appear to place highest priority on social regulation and regulating monopoly; regulation for competition has only a secondary role.
The rationale behind the decision of privatising public enterprises made Brazil a similar model of organisation of the US System with private companies delivering public services and regulation (through independent regulatory bodies) rooted in responses to similar problems these governments have faced. The claim that arises here is that governments have reformulated regulation in response to a common set of pressures (Vogel, 1996:12).

The regulatory authority in Brazil has spread its responsibilities not only in technical issues regarding licenses and interconnections, but also in monitoring anticompetitive behaviors and unwelcome takeover. It shares powers at the same level of authority with the Ministerial Council of Fair Trading regarding to the latter concern. In the US the Federal Communications Commission (FCC) is an independent United States government agency, directly responsible to Congress. The FCC is directed by five Commissioners appointed by the President and confirmed by the Senate for 5-year terms, except when filling an unexpired term. The President designates one of the Commissioners to serve as Chairperson. Only three Commissioners may be members of the same political party. None of them can have a financial interest in any Commission-related business. The FCC was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, television, wire, satellite and cable. The FCC's jurisdiction covers the 50 states, the District of Columbia, and U.S. possessions. The long history of the FCC is also a positive aspect that could be studied by Brazil to bring lessons for Anatel and regulation of Telecom as a whole.

The Commission staff is organized by function. There are six operating Bureaus and ten Staff Offices. The Bureaus’ responsibilities include: processing applications for licenses and other filings; analyzing complaints; conducting investigations; developing and implementing regulatory programs; and taking part in hearings. Even though the Bureaus and Offices have their individual functions, they regularly join forces and share expertise in addressing Commission issues.

Contrasting patterns of style are likely in regulatory regimes of different countries. Arguably, regulatory activity is a public policy choice. Therefore, historical and cultural biases in which they are embedded suggest, “that beyond a certain point convergence on a single management model is not simply implausible but likely to be impossible” (Hood, 1998:20). This claim implies that a country should look to other models as way to enhance their capacity to develop good practices but should not make mindless copies of policies from one country to another.

Empirical evidence shows that regulatory reform took place in both countries and it may lead to a claim that these States have responded to similar pressures (Vogel, 1995: 260). Divergence can be explained by other factors, such as institutional and ideological legacies particular to each country. The remainder of this paper will try to built an argument on how should, then, policies be transferred from one country to another without jeopardizing the own countries public administration legacy.

Literature about regulation, as well as doctrines about the best institutional design of regulatory agencies sustain that an stable regulatory regime should guarantee degrees of autonomy for the regulatory body from the Executive Government (Moraes, 1997; Stern, 1997; Salgado, 2003). This is essential for the agencies as they can implement in a credible manner the regulatory policies. The regulatory objectives are multifaceted and often deals with conflicts – for example the regulator should guarantee equity and efficiency in the delivery of the service. Mainly the regulatory mandate includes economic regulation, social regulation and technical or quality regulation.

One condition for the success and stability of the regulatory regime depends on the autonomy and independence of the regulator. This condition, however, may insulate the regulatory body from the pulse of the elected officials and decrease their capacity to formulate public policy for the sector. As a way to avoid this bureaucratic pathology, the regulatory agency should have a good system of accountability and transparency of their decisions. It is argued here that Supreme Audit Institutions play a key role to improve accountability and best practices in the regulation of utilities as much it has
in other government policies and program.

The advent of the 1996 Telecommunication Act

For more than fifty years the U.S. telecommunications sector was a regulated private monopoly, dominated by AT&T. During most of that period the Federal Communication Commission (FCC) and a variety of state authorities controlled the relative prices of telephone service and restrict entry. In the 1970 the first breath of liberalization swept over the sector as the FCC began to allow limited competition in the market for interstate dedicated business connection and won a battle with state regulators to open the market for terminal equipment, such as telephone handsets, answering machines, and modems, to competition. Competition in long-distance markets opened wider when MCI launched long-distance service for businesses without FCC permission.

AT&T’s use of its local facilities to frustrate the burgeoning competition in long-distance services and terminal equipment led to a lengthy antitrust case, which resulted in a consent decree that broke up the company in 1984 and imposed a quarantine that prevented the divorced regional Bell operating companies from offering long-distance services. For twelve years the AT&T trial court wrestled with several difficult issues in implementing the consent decree. At the same time the regional Bell companies chafed at their continued exclusion from long-distance services, while long-distance carriers were equally concerned about the slow progress toward competition in local markets, a problem beyond the reach of the AT&T decree. As a result, Congress was finally prodded to reform the entire telecommunications regulatory structure through passage of the 1996 Telecommunication Act. This legislation:

1. Opens local telecommunication markets to competition
2. Seeks to complete the earlier market-opening in long-distance services (including freeing the Bell operating companies from their quarantine)
3. Creates an economic environment intended to lead to the “deployment of advanced telecommunications and information technologies and services to all Americans”.

The effectiveness of the 1996 Act is highly debatable. The more deregulation oriented authors argue that the law was a drawback in the US experience with deregulation in numerous other sectors. Crandal (2000) argue that from the outset, the 1996 law represents a major step backward from the recent tendency of state regulators and the FCC to abandon cost-based regulation in favor of price caps. Wholesale rated and universal-service subsidies are to be determined by cost models, according to the act. Moreover, although the 1996 law opens all telecommunications markets to competition, even the once-protected local markets, it requires incumbents to cooperate in facilitating entry of potential competitors to a degree that has not been prescribed for any other recently regulated sector of the economy.

In fact, the 1996 Act provides much more than a prescription for regulated competition in telecommunication. It makes major changes in universal service policy; mandates new subsidies for schools, libraries, and rural healthy facilities; substantially deregulates cable television rates; liberalizes broadcast-ownership rules; and even regulates entry into the provision of alarm services. The universal service policies are to be supported by fees levied on all telecommunications services and are to be portable so that new entrants can receive the same payments as incumbents for offering services in areas where rates are bellow cost.

The 1996 law requires local carriers to unbundled their network elements, and, moreover, allow entrants to resell their service. Such resale simply transfers the marketing and billing function from

21 The FCC shifted from cost-based regulation to price caps n 1989 (for AT&T) and 1990 9for the local carriers’ interstate rates).
existing local carrier to the new (reselling) entrant. The 1996 law is silent on retail telecommunication prices, except for mandating that explicit rural subsidies be sufficient to keep local rates in high-cost rural areas at levels comparable with urban rates. State commissions still regulate incumbent carriers’ intrastate services, and most of these commissions continue to administer a distorted rate structure (Crandall, 2000:84). Although the 1996 law prescribes cost-based wholesale rates, it does not require the state commissions to move retail rates toward cost. Indeed, the FCC has increased the distortions between retail rates and costs by assessing charges to fund the Internet subsidies to school and libraries (ibid.).

The main critique of the 1996 legislation is that detailed cost-based regulation of wholesale rates proved not to be a satisfactory approach for stimulating competition in the telecommunication network industry. Rather, it would be preferred an attempt by regulator to undo the regulatory created barriers to entry built into the retail rate structure.

**The role of the Government Accountability Office in the oversight of utilities regulation**

The Government Accountability Office approach to utility regulatory policies is sharp and often deep. It has a specialized team that deals with infrastructure themes. Specialization and expertise in this area are also found in the Natural Resources and Environment Team, Applied Research Methods Team, Strategic Issue Team and International Affairs and Trade Team.

Performance audit carried out by the GAO out in the area of utility regulation is extensive. It include mergers of local telephone companies, promoting competition within the utilities markets, financial information audit in telecom companies, telecommunications technologies in rural area, the changing status of competition to cable television, many reports on critical infrastructure protection, development of information superhighway, benchmarks with other countries on DTV, wire base competition analysis, universal service, Gas Deregulation, competition and concentration of markets and other analysis, electricity restructuring, role of the Federal Energy Regulatory Commission, California electricity crisis in 2000-2001, experiences of states in deregulating electricity, availability of service, assessment and cost-benefit analyses of public private partnership projects, and a lot of work on all modes of transport (de)regulation among much others works.

Specifically, GAO Audits in the Telecommunications are many, some of these audits include:

1. Before the 1996 Act, in 1994 GAO disclosed financial information on 16 telephone and cable companies – In fact, GAO provided Congress with information on total operating revenues, cash flow from operations, and profitability, In addition, it provided more detailed financial information on the uses of cash flow from operations, including the extent to which capital expenditures are made inside and outside of the companies primarily line of business. This study certainly helped Congress to develop in depth analysis on the US Telecom Market.
2. Also in 1994 GAO made a report about information superhighway – addressing the key issues affecting its development.
3. GAO also made studies on Rural Development in 1996 – The report identified the steps towards realizing the potential of telecommunications technologies in rural area. This is a key regulatory issue addressed by the 1996 law
4. The GAO made a study in 1998 about federal programs that can be used to fund technology for schools and libraries 1998 – GAO studied 27 programs that provide funding that may be used to purchase telecommunication and information technology for schools or libraries.
5. The process by which mergers of local telephone companies are reviewed was studied by GAO in 1999 – This audit aimed to assess one of the primary purposes of the Telecommunications Act of 1996. GAO answered whether the application of the 1996 by FCC was promoting competition within the telecommunications markets.
6. Regarding to competition, GAO studied issued a report in 1999 about the changing status of competition to cable television such as that provided by cable and satellite.
7. GAO has produced many other reports on critical infrastructure protection, especially after the September eleventh event.
8. Comprehensive review of U.S. spectrum management with broad stakeholder involvement is needed.
9. Federal and state universal service programmes and challenges to funding (February 2002)
10. Another GAO report concluded that wire base competition benefited consumer in selected markets. This study was issued in February 2004.
11. Recently, GAO made a comparative study on German DTV and concluded that it differs from U.S. transition in many respects, but certain key challenges are similar. This report was issued in July 2004.

The role of the Tribunal de Contas da União in the oversight of utilities regulation
In Brazil a specialized unit staffing 22 auditors was established in 1998 to oversee regulation with a performance perspective. The control practices of this unit encompasses among others: concomitant control of new concessions (since 1995); Performance audit in the agencies (since 1999); Audit, evaluation and review of regulatory processes (since 2000); Concomitant control of the periodic tariff review in electricity distribution sector (since 2002).
Some results from TCU work include the review of calculation method for telephone, cable TV and hydroelectric power station concessions; Operational audits were conducted in each key sector, including telecommunication. Roads toll reduction as result of undue taxes inclusion, investments overestimated and additional revenue not taken under consideration by the regulator; better treatment of environment issues in the oil and gas sector; Identification of unclear definition of the duties of ministries and regulatory agencies and ineffective social tariff policy in electricity. Ongoing works include assessment of universal service effectiveness in telecom and transport. TCU has played a key role in the implementation of the new regulatory arrangement in Brazil and became a very respected policy analyst of the regulatory regime in Brazil. TCU has in many important respects helped to the stabilization of the system as well as the improvement of the performance of regulatory agencies in terms of good regulation. Much work has to be developed to reach a good regulatory system, but in the initial path of the reforms TCU works were essential to the regime continuity.
A fair classification of the types of work and criteria used by both SAI’s may be resumed as follow:
1. Economy
2. Efficiency and competition
3. Effectiveness
4. Equity and access to service
5. Best Practices (good management)
6. Good governance in the regulatory regime style
7. Quality of service
8. Goal attainment
Figure 5
Delegation oversight of utility regulation model
4. Issues faced by the Brazilian Supreme Auditing Institution in the oversight of the utility regulation sector and points of possible contributions from GAO experience on the oversight of utilities regulation

This section shows the main problems faced by the Brazilian Supreme Audit Institutions that might be imperiling the institution to achieve better results in the oversight of the utilities industries and the actions to overcome them are settled. The areas of major concerns are the Acquisition of knowledge in Regulation and Control; the development of novel methods and techniques of control that could be applied in the performance auditing of regulation; the best Organization, Administration, and Planning process to achieve better results; and finally the increase of Public Dialogue (Communication) of the SAI. In those five areas it is critical that TCU can find benchmarks of good practices to implement in the future. GAO might give the best contribution to a SAI development when we can see more closely the lessons the institutions has when carried out his duties in this area.

In the area of acquisition of knowledge TCU can see how GAO recruits, trains and manages its capital knowledge inside the institution. TCU could also benefit from the “stock” of knowledge already accumulated by the GAO to try to build relationships with key skillful staff within GAO. There should be also more exchange of contacts between TCU teams and GAO teams in common areas of expertise. Some staff were already identified and contacted during the program and certainly more information will be exchanged soon.

In the area of methods and techniques of audit TCU can find the best contribution from GAO. The Brazilian SAI in two ways can learn GAO practices. A first one is related to the own methods of work. The other way is to learn for the own issues that GAO analyses in its reports in the many areas of the regulation of utilities.

Regarding the Organization, Administration, and Planning there are also lessons from one institution to another. GAO has a more comprehensive strategic planning than TCU and has found the key performance indicators. TCU has too many performance indicators that might be imperiling a better utilization of such system. TCU is also relying his work too strongly in the attestation and judgments of the accounts of public agents that might lead the institution to a less relevant role in the policy cycle in crucial area of improvements needed in the public sector in Brazil. GAO has not, however, developed a more balanced score card approach to his performance indicators. And it is also difficult to say if the strategic vision of GAO can be accomplish fully because it depends very much in the Congress request to initiate engagements.

Lastly in the public dialogue side both GAO and TCU are given a very strong attention on the effectiveness and efficiency of their communication with the recipients of their information. This is the critical area of an SAI that has a strategic intention of increasing accountability, transparency and improvement of the public sector. TCU has implemented some good improvements in the way it format the reports. TCU has provided important stakeholders with very well designed reports and included graphics and more visual analysis to catch the audience’s interest. GAO has developed a more scientific approach to writing. GAO writing principles is one of the keys learning process that could be transferred to the Brazilian SAI, specially the highlight issued in each GAO report. One of the key points this strategy paper intend to stress is that TCU, albeit having made much progress in the design of its report, should learn from the writing process of GAO when conducting performance auditing. GAO reports are mainly addressed to Congress. TCU project will try to build products to different stakeholders as well, including media, citizens, consumers, scholars and public managers.

There are two projects in progress in TCU addressing the Modernisation of public services regulation control. One is supported by IDB (2002 - 2006) and the other by the DFID/UK (2002-2006), which intends oversight improvement with focus in the Social Inequality Reduction. The expected impacts of those projects include:
1. Improvement on the utility regulation oversight, including regulatory agencies and other areas of government,
2. Systemic view of the regulatory activity,
3. Interaction with consumer councils,
4. Increased accountability and transparency,
5. Improvement on the regulatory activity.
6. Improvement on the delivery of public services for the Brazilian People

The Role of Supreme Audit Institutions in perspective
The argumentation provided by this paper may lead to a claim that regulatory reform has challenged institutionalized oversight practices in many ways:

1. Revamping performance auditing techniques and methods inside the external control environment in general, and in Supreme Audit Institutions, specifically
2. Creating new arrangements among government actors, especially the relationship between the executive and regulatory agencies, with reflexes in the Supreme Audit Institutions practices. The General Accountability Office is facing less problems to oversee regulatory agencies that its Brazilian counterpart because the independence of regulatory agencies from the executive branch is a more acceptable cultural arrangement in the US public administration and because the organ has created a stronger relationship with Congress, that in its turn, is more prepared to affect the police making process in the US, especially regarding to utility regulation issues. In fact, the 1996 Act is mainly the result of Congressional discussion with strong participation of interest groups. The new reform in the regulatory system in Brazil is mainly an Executive proposition that is unlikely to be affected substantially by Congress discussion.
3. Creating more specialization in the Supreme Audit Institution as a way to attend the oversight of regulatory agencies.
4. Demonstrating that SAI´s are a main stakeholder in the good design of a regulatory system. The US GAO reports are the main input to Congress to address transformation in the policy making process of regulatory matters. The TCU reports depends less on Congress for the implementation of their recommendation. It has addressed more detailed oversight regulation issues than their US counterpart. However, the US regulatory regime style has been exposed to in-depth works conducted by the GAO that has helped the system to evolve to more competition, without jeopardizing the social obligations of the regulator. In short, the GAO does not address detailed control over the regulatory system, but more broad themes of sustainability and effectiveness of the system as a whole. TCU has played a key role in the construction of a new regulatory system in Brazil. Nonetheless, it is very likely that a future role of the Brazilian SAI might evolve to kinds of works developed by the GAO. In fact, some audits on universal services and regulation effectiveness are examples of this tendency.
5. Rapidly changing the vision of an oversight institution. Arguably, regulation of telecom is an evolving concept. Mainly because it is a rapidly changing technological area. In such vein, the SAI should be constantly addressing the issue of effectiveness of regulation. On the one hand, SAI’s should verify if the regulatory environment is permissible for development of competition and investment on new technologies and, on the other hand, if there is a fair distribution and access to the services by the population.
6. Setting the proper role of an oversight of the regulatory system, which should be seen as a key success factor for good governance on regulatory matters. Arguably, the credibility of such system is achieved if regulatory agencies are able to conduct independently their mandate, on the one hand, and if they are accountable to their external constituencies, especially the Congress; with support of a technical body like Supreme Audit Institutions, on the other hand.
7. Being a learning organization is a key success factor for supreme audit institutions. Vicarious learning is also desirable if public sector specificities, culture values and dependent paths of reforms
are taken into consideration. The case of comparing the US oversight practices with Brazil in the utilities of regulation is an exemplar way on how such comparison may lead to conclusion about smart practices.

5. FINAL REMARKS

It was argued that there are two critical success factors for a stable regulatory regime. On one hand, the agency should have autonomy to implement regulatory policies, without direct interventions of other government institutions. On the other hand, stability also means transparency and accountability. In this vein, Supreme Audit Institutions are key to the success of a well-designed regulatory regime style. Supreme Audit Institutions increased in importance in many countries as organs of distinctive constitutional position endowed with the necessary independence, expertise, and professionalism to conduct performance audit. Surveyed practices among OECD countries have led to a claim that SAI’s seem to be following the doctrine that a SAI embedded in a democratic and market-oriented economy should balance and integrate the pursuit of two types of accountability: compliance accountability and performance accountability. The first type is of high priority because it secures the proper conduct of those who deal with public money. However, this proper conduct does not seem to be enough to reach good and responsible government (Aucoin, 1995). In such vein, performance accountability seeks to fulfill an expectation gap (Power, 1997). The gap between what societies expects as good public service and what is practiced. Performance auditors seek to aid government and agents that work for it to create public value (Moore, 1995) when discharging their duties.

In this paper, performance audit was placed as a strand of public management policy and this latter as a main strand of the New Public Management. Such location has permitted to approach performance audit as a field of academic research and argumentation, and professional discussion about management policy interventions within executive government. So defined, the argumentation about performance audit provided here has focused on the political and organisational processes through which policy change takes place. Further, the kernel issue of this paper was to propose that this subject matter should focus on substantive analysis of public management policy.

It is argued that Supreme Audit Institutions have a key role for the sustainability and improvement of a sound regulatory regime. The US and Brazilian cases are exemplars in this area of oversight. The latter is trying to build a more systematic approach to the regulatory oversight; the former has created the conditions to advice Congress on sound policies in the regulatory arena.

It has been argued in this paper that performance audit applied to the utility regulation is an area of increasing interest for SAI. The discussion provided in this paper intended to confirmed that institutional collaboration capacity building among SAI’s is not only a feasible task to be reached but also desirable. However, contrasting patterns of style are likely in regulatory regimes of different countries. Arguably, regulatory activity is a public policy choice. Therefore, historical and cultural biases in which they are embedded suggest, “that beyond a certain point convergence on a single management model is not simply implausible but likely to be impossible” (Hood, 1998:20). This claim implies that a country should look to other models as way to enhance their capacity to develop good practices but should not make mindless copies of policies from one country to another.

This paper has provided an initial framework where a collaboration capacity building project might be advanced from the Brazilian Tribunal de Contas da União and the US Government Accountability Office in the area of utilities regulation. If the present analysis can be expanded to other areas of expertise or even to other SAI’s is an interesting issue to be developed in the future.

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