

Supreme Audit Institutions in Search of Accountability in the Utility Regulation Sector: An Appraisal of Possibilities of Institutional Collaboration Capacity Building between the Brazilian Tribunal de Contas da União and the United States Government Accountability Office

This strategy paper reviews performance auditing practices conducted by the US Government Accountability Office in the oversight of utility regulators. The objective of the review is to identify areas, issues and practices of possible collaborations between GAO and the Brazilian Tribunal de Contas da União (TCU) in works of performance auditing of the utility regulators. It clarifies the concept and some critical issues about performance auditing. It identifies exemplar works of both SAI's 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 could also help other SAI 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, especially after privatization and competition had been prescribed as remedy to improve a country's infrastructure capacity.

STRATEGY PAPER FOR THE BRAZILIAN TRIBUNAL DE CONTAS DA UNIÃO

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August 2004
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To my wife Karina

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FOREWORD

The role of Supreme Audit Institutions in supporting the work of their respective governments is evolving, and a number of key factors are behind the change. One factor is the significant advancement of the discipline of Public Policy and Public Administration in SAI countries and around the world. This means that the SAI's can benefit both from the research being performed in other institutions and also from the ability to hire well-trained graduates to contribute to the SAI. A second factor is the increase in complexity of policy issues faced by governments and the volume of input provided by special interest groups. This creates a unique opportunity for SAI's to competitive capitalize on the objectivity, access to government institutions, and institutional expertise to set a high standard for policy analysis. The third factor affecting the SAI's work results from change in technology, and specifically the internet which enables certain types of communication and research to be performed much more quickly. The parallel development of these three factors creates an opportunity--if not a need – for more comparative and cooperative work on the issues that SAI's and governments have to address. This comparative work makes sense both on the methodological side, in the application of creative methods to deliver policy relevant analyses; and on the matter of government solutions, where best practices from one nation might be instructive for other nations who are facing similar problems.

However, given these factors, it is fair to ask why this kind of comparative and cooperative analysis has not been more frequently performed. One possible reason is that these developments are relatively new, and individuals and institutions have not yet recognized these increased opportunities. However, it is more likely that the significant challenges of performing this research remain the most significant obstacle to its more frequent use. It is not always easy to adapt the lessons learned from other nations, whether it is in the methods used to analyze a problem or in the solutions implemented to address a problem. Successful efforts require a clear understanding of the nature of the policy problems and the institutional cultures, and this requires a significant investment of time and expertise, and learning institution must also have the ability to implement change. In some cases, it is not possible for organizations to make the necessary investments of their staff to perform quality analysis, and in others, they may not be in a position to create the change based on the new insights.

In those cases where this investment of time and expertise is made, we can expect to see some significant insights. In the case of this particular research project, Marcelo Barros Gomes has made a substantial effort to observe both the use of a variety of methodological techniques and also study alternative solutions achieved to U.S. policy problems. At least as important, the TCU may be in a

position play much more of a leadership role in the application of public policy analysis than has been possible for SAI's in countries such as the United States. So in this case at least, the conditions are there for real results.

I look forward to following the results of this study as they are applied in Brasil, and hopefully will have an opportunity to participate in others that build on this effort.

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August 2004

1. INTRODUCTION

This strategy paper is part of the core products required by the International Fellowship Program of the Government Accountability Office, attended by the Brazilian SAI Tribunal de Contas da União in 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 the program would like to benefit from my participation in this program by learning “Lessons to TCU on how GAO conducts performance auditing studies in utility regulatory agencies”. My 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. As a manager of the TCU program¹ to develop and consolidate the operational capacity of TCU to undertake external control work in this area, I would try to implement lessons – in a policy learning transfer context - from the GAO to TCU in the area of performance auditing, using some GAO reports in the utilities sector more specifically as cases of study.

This strategy paper is based on the classes delivered during the program, interviews and meetings attended during my 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. After attending this Program I am able to provide two immediate outputs for the Brazilian SAI. One output is to prepare this strategic paper as a way to better understand how TCU practices could be improved by using some insights from GAO work. A second product is to elaborate a paper to be presented in the next *Centro Latino Americano para el Desarrollo (CLAD)* Congress, to be held in Madrid in November 2004 addressing the following issue: “Supreme Audit Institutions in search of accountability 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”. Presently I am focused in the first product, but the later is certainly going to benefit from this plan to be presented to my SAI.

¹ This program is partially financed by the IADB – 2002-2006.

2. ARGUMENT OF THE STRATEGY PAPER

This strategy 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 contribute to the extent that the Brazilian Tribunal de Contas da União might adopt some performance auditing GAO reports in the utility regulation oversight as benchmarks for developing its own work. 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 SAI. 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.

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 own initiative, what is not apparently the case of the US Government Accounting Office.

The US Public Administration and the role of the Government Accountability Office (GAO) compared with the British National Audit Office (NAO)²

In the UK, there is a complex alliance between the Treasury, the Parliamentary Accounts Committee (PAC), and the Comptroller and Auditor General (C&AG)ⁱ. 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 Oxbridgeⁱⁱ younger recruited, few will reach this statusⁱⁱⁱ. 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 do not.

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).

² 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.

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 14 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).

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 his 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 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:

Audit of the economy of administrative activities in accordance with sound administrative principles and practices, and management policies;

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

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, 1992:19)^{iv}

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^v, 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 book³ 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 an assessments that provide a prospective focus or that synthesize information on best practices or crosscutting issues.

The yellow book explicitly stated that performance auditing should include:

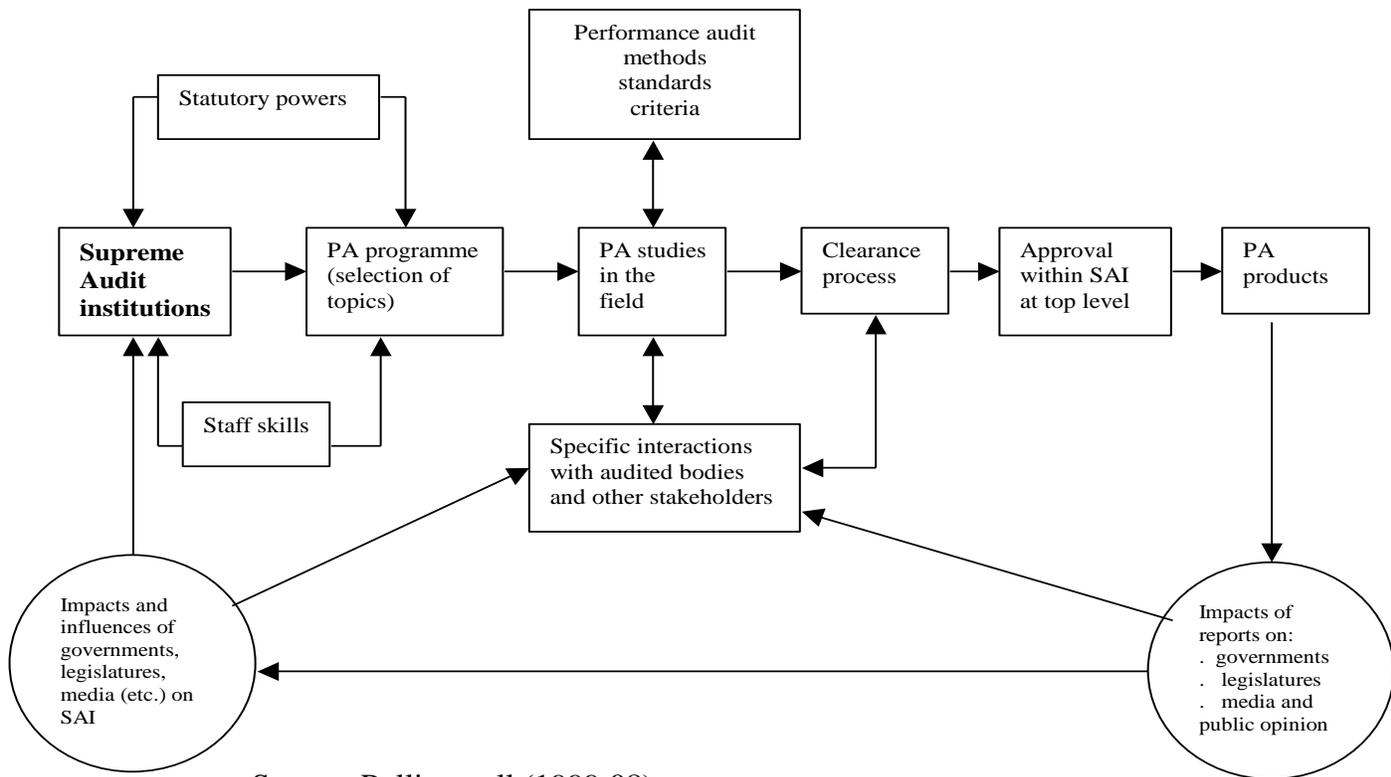
1. Assessing program effectiveness and results
2. Economy and efficiency
3. Internal control (management operations)
4. Compliance with legal or other requirements
5. Providing prospective analyses, guidance, or summary information.

The concept of performance auditing for this strategic 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 bellow 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.

³ The Yellow Book is issued by the GAO and correspondes to the Generally Accepted Government Audit Standars in the United States.

Figure 1 . The process of performance audit



Source: Pollitt et all (1999:08)

The public management policy analysis stream of performance audit

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 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 Management^{vi}. In this vein, explanatory arguments^{vii} 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.

The remainder of this section concentrates on these key contested issues in the domain of performance accountability. 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)^{viii}. 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. It links these approaches, respecting the structure of the argument here defined, to the paper policy questions. The paper appraises whether public management literature applied to performance auditing 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 (Moore, 1995; Bardach, 1998; Hood, 1998) and Management Accounting and Control doctrines.

The Contractual model of performance enhancing accountability

Supreme Audit Institutions seem to be certain about the necessity to incorporate (or consolidate) performance audit as a line product of their review portfolio. Executive governments, in their turn, seem to lack of resistance to have their activities reviewed through this perspective^{ix}. A plausible reason for this convergence of ideals is that as some governments have been implementing contracts

(output/outcome agreements) between ministers and head of agencies/chief of departments, those 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

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).

Principal-agent theory is a construct in the field of New Institution Economics. Such theory states that since agents make choices for principals (decision structure) and principals cannot review all choices (information structure), principals should provide agents with incentives to enforce them to make “good choices.” This theory is underpinned in the economic rationality: the process by which agents make choices is a function of opportunity and cost. Such function should be maximised if agents have incentives to make good choices for them (principals)^x.

Peter Aucoin’s argument about New Public Management states that reforms under the Westminster system regarding the matter of improving performance, and improving the clarity of policy objectives (to enhance accountability) have driven along two different paths. Namely “plans” and “contracts.” The latter adopted by New Zealand and England, and the former in Canada and Australia (Aucoin, 1995:196). Aucoin stresses advantages and disadvantages of these two models, but rejects the proposition that these approaches are mutually exclusive. For purposes of discussion of this paper, I select Aucoin’s argument involving the contractual model in New Zealand, since the author makes a

more positive evaluation of this model in that country than in England. New Zealand, therefore, would be, interpreting Aucoin, the best case of a “contractual” model.

Aucoin makes a very positive evaluation of New Zealand reforms under these contractual arrangements.^{xi} Securing accountability in this context, according to the author, would depend on the level of transparency of determining responsibilities between ministers and chief executives, on the one hand; and that managers (chief executives) are assigned authority and responsibility for full management of “financial, personnel and capital resources deployed in the provision of outputs”, on the other (Aucoin, 1995:227). Moreover, the State Services Commissioner can impose sanctions and rewards on chief executives (Ibid. 226).

Problems of rewarding and sanctioning civil servants

Aucoin seems to be mistreating at least three circumstances in his positive evaluation about output/outcome agreements between ministers and departments/agencies. A first proviso would be that public servants would be rewarded or sanctioned by good or bad achievements specified in contracted outputs. It could be argued that public managers should be inherently moved by creating public value (Moore, 1995)^{xii}. In this context, how could this value (output/outcome achievements) be measured financially, contrasting with the private sector where this value equals profit? In other words, how and how much should public servants be rewarded/sanctioned for having complied (or not) with contracted outputs (as in the private sector sense). The doubt about the application of principal-agent theory in the public sector is to what extent the (des) incentives, crucial to the maximisation of the choice function, is applicable to public servants^{xiii}.

Constraints on this first proviso could be relaxed if the cultural bias of the collectivity is hierarchist, since the public service would be motivated to satisfy “authoritative aspirations”(Barzelay, 2000:102)^{xiv}. In this case, they would be prone to accomplish whatever should be contracted, whether or not there is an incentive to do so.

Bringing culture theory applied to public management on the scene to contrast a hierarchist ethos with an individualist cultural bias assumption of principal-agent theory is to assume that the public service system has a hierarchist “way of life” (Hood, 1998:73-76). Such construct, however, is in conflict with a performance-oriented approach by contract. Arguably, doing public management in a hierarchist way means that “self-organising” and “self-steering” (Ibid) processes are being avoided. The main reason for a contract in the New Institutional view, however, is to self-steer and self-organise public managers and public agency by incentives.

To make this discussion clearer, “ways of life of administration” should be applied to identify types of administrative cultures where a contractual approach to public management is effective. Figure 2 below demonstrates that only in an individualist culture contracts may reach some effectiveness in their implementation. However, as it will be demonstrated in the following sections, effectiveness of such an implementation would also depend on the type of public agency (Wilson, 1989).

Figure 2. Culture theory applied to Public Management

		Group ^a	
		High	Low
Grid ^b	High	<p align="center">The Hierarquist Way</p> <p>Control: <i>Oversight ('command and control' techniques)</i> Contract: <i>Low effectiveness</i> Management: <i>High commitment</i> Ethos: <i>Bureaucratic</i> Doctrine: <i>'Bossism'</i></p>	<p align="center">The Fatalist Way</p> <p>Control: <i>Contrived randomness (unpredictable processes or payoffs)</i> Contract: <i>Individual, not collective</i> Management: <i>Low commitment</i> Ethos: <i>Low co-operations, distrust, and apathy</i> Doctrine: <i>'Chancism'</i></p>
	Low	<p align="center">The Egalitarian Way</p> <p>Control: <i>Mutuality (group processes)</i> Contract: <i>Collective, not individual</i> Management: <i>Internal commitment</i> Ethos: <i>Insulated community</i> Doctrine: <i>'Groupism'</i></p>	<p align="center">The Individualist Way</p> <p>Control: <i>Competition (rivalry and choice)</i> Contract: <i>High effectiveness</i> Management: <i>By results</i> Ethos: <i>Market-like</i> Doctrine: <i>'Choicism'</i></p>

^a Extend to which public management involves coherent collectivities, institutionally differentiated from other spheres of society

^b Extend to which public management is conducted according to well-understood general rules.

Source: Adapted from (Hood, 1998: 09; 53; 235; Hood et al 1999:14)

In a hierarchist culture of administration, performance audit may be ineffective if it relies on a contractual approach because the bureaucratic ethos of organisations rooted in such culture may lead to reversal effects. The rule-bounded paradigm of this kind of organisation makes it very difficult environment to make managers 'free' to management. They are ready to work in a very legalistic environment and they are less committed to result-achievement than to accomplish prescribed procedures. Therefore, the organisation's strategy should be very well designed. Mission, vision and objectives should be aligned with goals and targets. Performance audit in this context should focus on a managerial approach rather than on output/outcome achievements. Furthermore, contracts usually specify outputs and outcomes, but not how to achieve them. A hierarchist organisation needs to have norms (procedures) that show how to perform a task or how to achieve a goal. If it is well designed,

results are achieved by the high grid/group bias. In such contexts, compliance accountability is likely to be more effective than performance accountability.

In egalitarian cultures, contractual approaches between principals and agents should be agreed on for the collectiveness not for individuals. The low propensity to competition (Dunleavy and Hood, 1994) in such cultural contexts makes other forms of control other than the internal control by peers ineffective. Moreover, such types of organisations are resistant to be overseen, as they tend to insulate themselves from other parts of society. The ‘Village World’ of mandarins in the core of the British Government Executive (Heclo and Wildavsky, 1974) and New Zealand’s Treasury (Schick, 1996) are examples of such organisational culture. Performance audit in such contexts sounds ineffective to modify behaviour.

A fatalist organisation should assign individual contracts and check them randomly, because people tend to respond to external norms, especially rewards/sanctions. However, they have low commitment to management and collective aspirations. They are willing to accomplish external norms to avoid punishment, however, they are less prone to be committed to an organisation strategy. A performance audit in such context should focus on the reliability of internal control systems and random check on individual contracts.

An organisation embedded in an individualist culture would be a best case for a contractual relationship to be effective in terms of the principal-agent theory. According to the individualist perspective, effective accountability in public services means making producers responsive to customers in ‘market-like relationships, just as business firms sometimes claim to be accountable to their customers’ (Hood, 1998:55). A contract would be an ‘instrument’ that should set clear relationship between customer-provider, which is called by Schick (1996) as performance/purchase agreement. Problems of performance measurement remain unresolved, however. The first refers to the difficulty to establish a pecuniary value of output and outcome in the public service. Another problem is related to the measurability and observability of outputs and outcomes, which are often difficult to measure in the

public sector. Lastly, it should be highlighted that measuring difficulties are related to both feasibility and cost to gather relevant information (Thompson, 1991).

Problems of public value search

A second proviso would be that public managers' actions would be tightly related to outputs/outcomes agreements. Although Moore's (1995) and Bardach's (1998) theoretical frameworks about the role of public managers relate mainly to the US context (Aucoin analyses the Westminster system), there seems to be no reason to assume that the other systems are so different from that one, in respect of vagueness and obsolescence in mandates of public managers, specifically. Moore and Bardach argue that the role of public manager is to create public value. Public value should be developed through a strategy. They propose different approaches to this strategy. However, they are not mutually exclusive, but rather complementary.

According to Moore, a public manager should think strategically. The construct of a strategy should be substantively valuable, legitimate and politically sustainable, as well as operationally and administratively feasible (Moore, 1995:71)^{xv}. This behavior is defensible because public mandates are never completely specified and because managers' location in government gives them some information advantages over political overseers with regard to where public value lies, and how it can be created^{xvi}. In such context, according to Moore, political management^{xvii} is justified rather than the following of specified outputs/outcomes. From this perspective, principal-agent theory as a support to a contractual approach to the public sector also seems to suffer as a result.

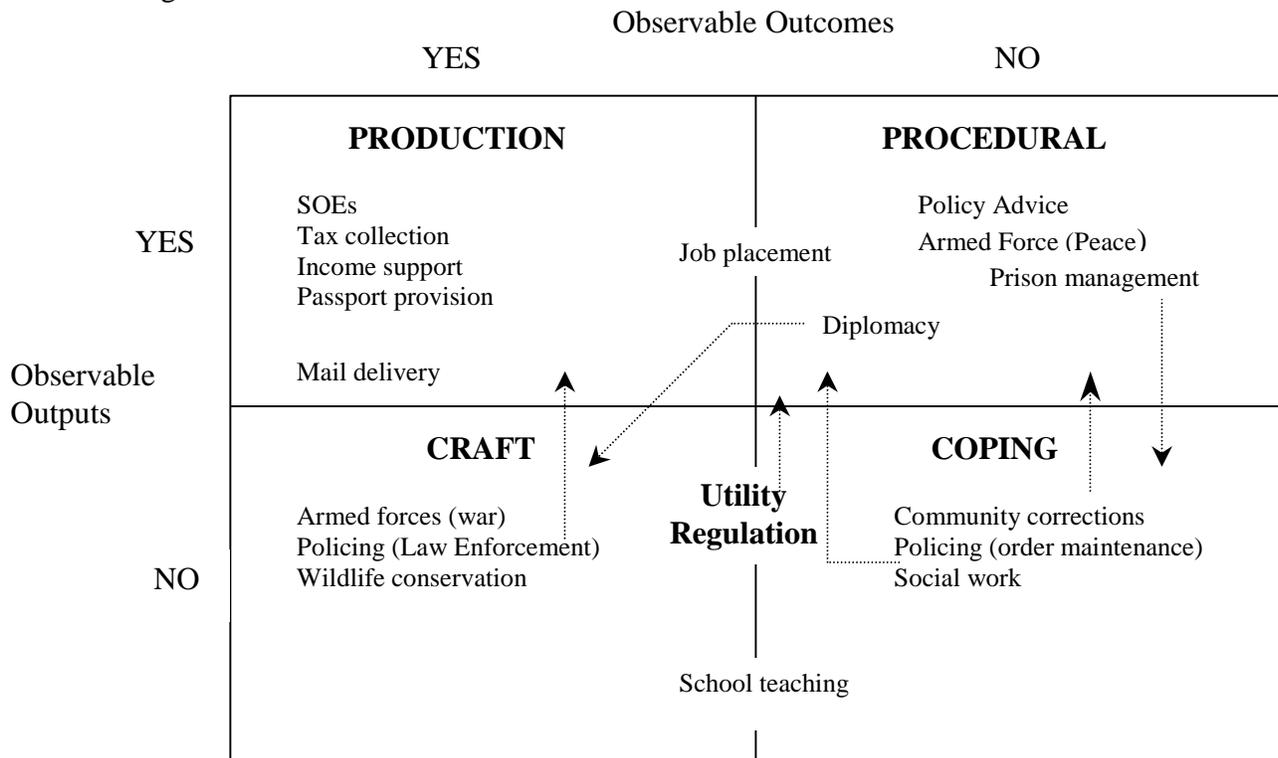
Moore's analysis about the role of public managers has implication on the effectiveness of performance audit. Arguably, from Moore's perspective an after the fact control should focus on values of output/outcomes achievements of a public manager's action rather than a check of a specified output^{xviii}. In this vein, program evaluation, cost/benefit analysis and cost/effectiveness analysis should

be more adequate tools than other audit performance techniques, as performance information audit and goal attainment.

Problems of performance measurement and output/outcome observability.

A third proviso 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 3 below). 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.^{xix}

Figure 3. Wilson Matrix



Source: Adapted from Gregory (1995: 58-59)

Having Wilson Matrix in mind, Gregory (1995) makes severe criticisms on the contractual model of New Zealand reform. Relying too heavily on outputs compliance, he argues, that reform may have led to goal displacement, since this exaggerated preoccupation with managerial accountability have occurred at the expense of administrative responsibility, mainly in contexts other than production agencies. As a response, he argues that strong sense of shared mission; commitment to professional norms standards and values, mutual trust and respect should stress particularly craft and coping agencies (Gregory, 1995:62). This subjective responsibility is interpreted here as a public interest ethos, a core value of the Progressive Public Administration philosophy.

Empirical evidence suggests that a performance-orientation exclusively based on a contractual model is not quite adequate for the public sector^{xx}. 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)^{xxi}. 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.

The managerial model of performance enhancing responsibility

Schick (1996) provides a critical analysis about the excessive emphasis in the contractual model of New Zealand 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).

Such managerial model is distinct from the contractual model because it relies on agreed "plans," not on "contracts." Since plans are agreed upon principals and agents, their achievements are not linked to reward or sanction, but to a subjective responsibility of public servants to accomplish what was planned. The main idea here is to secure good management practices through Management and Accounting Control systems. In this context, defining the organisation's vision and mission, aligning critical performance variables with the organisation strategy, measuring them adequately and setting standards or targets to accomplish this strategy is essential to achieve success. Success statements, according to Management Accounting and Control doctrines applied to public sector (Kaplan and Norton, 1996; Boyle, 1989) may be summarised as follows:

- 1) Strategy and vision must be clearly translated into objectives and targets and communicated to the different management levels.
- 2) Objectives and targets should be expressed by specific measures, be related to long-term planning, and align initiatives with the allocation of resources and budgeting.
- 3) Aims and objectives should be adjusted to the type of public organisation in terms of particular criteria for efficiency and effectiveness.
- 4) Performance measures should be monitored and evaluated periodically.
- 5) Information should be used in a way to enhance feedback and learning.

Literature and research about public management, as those provided by Wilson (1989), Hood (1998), Moore (1995) and Bardach (1998), would indicate some problems in accomplishing these good management requirements from doctrines of Management, Accounting and Control. Arguably, if mission and objectives equal mandates, in Moore's evaluation, they are always vague; and accordingly to Bardach, they are likely obsolete^{xxii}. If targets equal outputs/outcomes, in Wilson's theoretical framework, they are only observable in a specific kind of public agency, namely production. If self-steering and self-organising are aims of a performance orientation, only in an individualistic cultural context would it be fully effective.

From a Management, Accounting and Control doctrinal perspective, budgeting and financial management processes should be tightly aligned with a performance-orientation strategy (Kaplan, and Norton, 1996:248). Studies within public sector budgetary and financial systems have been indicating that integration of such system with audit and evaluation processes should be looked upon with caution. Especially because there is a range of 'functions' that budgeting, audit, and evaluation may perform in different countries (Gray et al., 1993:13).

The changing role of budget offices is to provide three basic budget tasks, namely, aggregate fiscal discipline, allocative efficiency, and technical efficiency (Schick, 1997:5-6). Fiscal discipline means that government should control total spending. Allocative efficiency is reached when managers can allocate resources in accord with government priorities. Technical efficiency relates to the improvement of efficiency in the delivery of public services. These main functions, however, may be in tension. Especially because downsizing the allocation of resources to managers may remove power from the policy-making community as ‘the budget office operates at a disadvantage vis-à-vis the spending departments when it aggressively seeks to reallocate resources. It may lack sufficient program information and political support to do the job’ (Schick, 1997:16). In addition, as highlighted in this paper, measuring efficiency and effectiveness through output/outcome is not always feasible. Therefore, funding public agencies from this perspective may lead to ineffective allocation. New Zealand reforms have examples of such inefficiency. In the context of those reforms, cash-based accounting systems not collecting proper information about products costs have led to compliance with narrow goals (Schick 1996:78).

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.

Specificities within public service seem to constrain the applicability of both models of control in the public sector as a whole. There are contingencies (Wilson, 1989), systems of knowledge, beliefs, and values (Dent, 1991) in the public sector that imperil the development of pure contractual or managerial models. Therefore, it is claimed that other constructs should be considered as to relax those constraints

on implementing a performance-orientation in government, and, accordingly, the accountability and auditability of such.

Beyond the contractual and managerial pure models

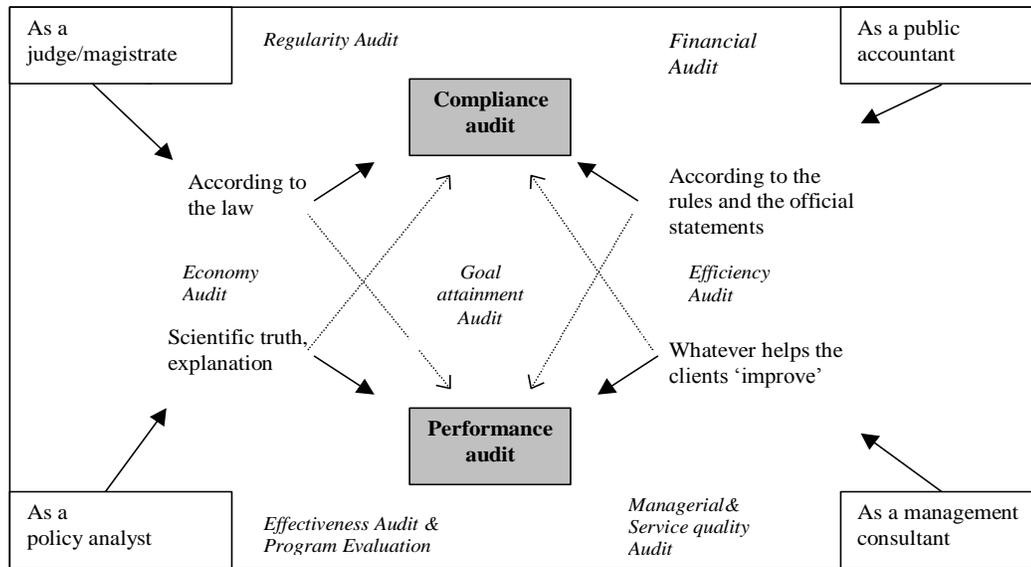
The variety of methods, criteria, and standard setting (Pollitt et al. 1999) of performance audit activities conducted by SAI's might be explained by the multi-biased context in the public sector. A question that might be posed to SAI's, however, is to what extent it is possible to move closer to the auditees's administrative task and make value-judgment about managerial issues and policy outcome without jeopardizing the position of guardianship of the proper conduct of those who deal with public money. It includes costs, a shift from an oversight position to a mutual work, and competition.

The distinction between after the fact and before the fact control might blur as performance auditors look to managerial practices inside agencies. Auditors may be, for example, helping public agencies to build a managerial capacity to achieve better results by helping them to design good models of management, or even by specifying, peer-by-peer, reliable performance indicators. NAO's Modernising Government Paper (June, 1999) seems to be looking into that direction. Arguably, the Office has created a team of experts in an attempted to draw a reform in the way government does 'business', focusing on validation of performance measurement, improvement in the way risk is managed, and the like.^{xxiii}

As figure 4 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 as a process of regulation inside government seems to be pushing SAI's from an oversight position to a closer relationship with their 'clients'. Mixed models of control (Hood, 1998:235) may be reshaping a SAI's hierarchist ethos stressed on legality and due process to a more egalitarian ethos, privileging a process of a mixed cultural ethos (hierarchist-mutual; hierarchist-

Figure 4. Possible roles for performance auditors



Source: Adapted from Pollit et al (2000:106)

→ Primary concern
→ Secondary concern

competitor), as they should work closer to the entities analysed through performance audit.

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^{xxiv} 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 the models analysed here are just ideal ones. Agencies are usually embedded in mixed cultures and multiple-kind tasks. Contracts and managerial efforts are often used simultaneously to improve performance and enhance accountability. For purposes of analysis, however, it is quite useful to identify ideal situations. In this perspective, Wilson's agency-typology is analysed in its pure model, albeit it is unlikely to find an agency that has tasks embedded only in a pure form.

a) Production agency

In production agencies, all kinds of performance audits are suitable and desirable, since it is possible to observe both outputs and outcomes. Arguably, it should not be so costly to implement a performance information system because the gathering of information is easier. Accordingly, a contractual approach suits this kind of agency better in terms of enhancement of accountability. However, if the cultural bias of such agency is not individualist, problems of compliance may arise. In sum, production agencies in an individualist cultural bias may be the most effective environment for a contractual approach. In other circumstances, a mixed model is desirable.

b) Procedural agency

In procedural agencies, since outcomes are not visible, a performance audit stressing outcomes would be ineffective. A contractual approach could be done in terms of outputs, but not outcomes, respecting the cultural context^{xxv}.

c) Craft agency

Craft agencies should be object of program evaluation and program effectiveness audits. A contractual approach should be done envisioning outcome measures, but not outputs. An example is when detectives in a police department are evaluated on the basis of crimes solved (Wilson, 1989:166).

d) Copying agency

In coping agencies, neither outputs nor outcomes are observable. In a pure coping agency, any use of contractual accountability will create an unauditible environment. It lacks measurable and observable output/outcome, essential to the audit process to take place (Power, 1996). A managerial model is the only viable way to enhance performance and secure a certain degree of performance accountability. In this sense, performance audit should stress the managerial side of such agencies.

3.4 Beyond the 3E's: towards a new discipline or back to compliance?

It has been observed that coping and craft agencies are not quite suitable for types of audit stressing output/outcome achievements. 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 after-the-fact reviews in the public sector in a performance-oriented perspective.

On the other 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.

As impact audit is implemented to assess effects of public programs, policy and organisations, beyond economy, efficiency and effectiveness, constraints on analysing 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)^{xxvi}. 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.

Addressing future direction within reforms in New Zealand Allen Schick (1996: 87) writes: ‘the next steps in New Zealand State sector reform will have to address this larger agenda. They will have to move from management issues to policy objectives, to fostering outcomes, such as social cohesion, that have been enunciated by the Government and are embraced by New Zealanders. They will have to do for outcomes what has been accomplished for outputs. The task ahead is much more difficult than what has been accomplished thus far, but the rewards of success will be even greater’. This perspective seems to be compatible with the implementation of a more specific type of performance audit conducted by SAI’s, relying on ex-post policy analysis issues, such as impacts and equity of programs, policy, and public programs. SAI’s, however, might be more exposed to pressures and criticism, especially from the policy-maker community. This exposition might be justified once society would be able to have access to an expert, professional and independent opinion about public value of government operations.^{xxvii}

Public Management literature challenged?

As exposed, there seems to be specificity within the public sector imperiling the implementation of an ideal model of performance management, in general, and performance audit, specifically. It has been demonstrated that a contractual approach emphasises much accountability at the expense of improvement. In addition, this approach, borrowed from business economics, lacks a coherent theoretical base to be implemented as a public management policy. A managerial approach, therefore, seems to be more adequate, but even here problems are still to be solved, as the integration of financial and budgetary system (Schick, 1996), and vagueness/obsolescence of public mandates (Moore, 1995). As ideal-types models, hybrids or mixed models are possible. Just like in Culture Theory, where mixed models derive from the array of the four “ways of life”. What is to be highlighted here is that improvement in literature is welcome to accommodate these variations.

Research could, for example, find what critical performance variables per kind of agency are, by identifying even more types of agencies than Wilson did. Another claim is that the problems in performance measurement, as those identified by Hatry (1996) when tracking the quality of public service, may be diminished by developing research methods in the field of public management in a performance-oriented perspective.

Corevellec (1997) is an extraordinary example of an empirical study on how the concepts about performance may vary among fields and systems. He reaches the conclusion that performance is better characterised as stories of achievements. In such vein, his conclusion parallels Hood’s conclusion on what factors count on the decision of how-to-get organised. Hood (1991) identifies the acceptance factor as a key that contains such rhetorical power able to convince the relevant audience about the proper way to get organised. That is how, according to Hood, certain doctrines come to be accepted. The Acceptance Factor could be well applied in the field of performance, since the dialectical power of stories of achievement is to be the key to open the lock of what is told as an organisation’s performance.

Power (1996) also indicates a way to improve research in this field. He argues that audit is an active process of “making things auditable.” In such vein, the negotiation of a legitimate and institutionally acceptable knowledge base of measurability and verifiability is required (Power, 1996:294). Performance audit is a kind of evaluation (Barzelay, 1997). There should be also attempts in the public sector to build a knowledge base about the measurability of performance indicators. Those are just some indications of how research could be designed to build more knowledge about the complex matter of performance accountability in the public sector.

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 infra structure 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).

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.

Differently from Brazil that has two different agencies, The Federal Energy Regulatory Commission, or FERC, is an independent agency that regulates the interstate transmission of natural gas, oil, and electricity. FERC also regulates natural gas and hydropower projects.

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 not rarely deals with conflictions – 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.

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; 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.

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 this area 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, 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.

A fair classification of the types of work and criteria used by SAI 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

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 GAO can give. 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. 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.

The following paragraphs contain the main actions to be taken by the TCU project to enhance the SAI capacity in the oversight of regulation.

1. Acquisition of knowledge in Regulation and Control

1.1 Difficulty of access to sources of information:

This problem occurs due to the lack of information about events, editorial releases and specialized publications in the area; difficulty in maintaining regular exchange with experts and researchers, difficulty of access to bibliography about the subject - since most of the texts are written in a foreign language.

Action 1 – Create a model for the Training Center in Regulation Control – CECR - and work towards its implementation

- CECR model defined

Action 2 – Implement structure for the Training Center in Regulation Control – CECR

- Physical and Technological structure of CECR set up at SEDOC/ISC;

Action 3 – Build bibliographic collection on regulation;

- Catalogued and indexed papers;
- Controlled vocabulary compiled;
- Publications/periodicals acquired;
- Exchange established with other libraries⁴;
- Collection made available to interested public.

Action 4 – Create a group to coordinate the writing of reviews about major decisions of the Brazilian Court of Audit – TCU in the area of privatization

- Group formed
- Reviews written
- Publications organized
- Data base of the reviews created

Action 5 – Establish permanent exchange with entities dedicated to the study or development of papers in the area of Regulation.

- Training centers identified
- Professionals identified by area and contacted

Action 6 – Identify external events (seminars, congresses, courses, etc.) in the area of regulation and control

- External events identified

1.2 Lack of knowledge

The studies about the subject are scarce and very recent in the national framework. Literature - books and periodicals - is also very new.

Action 7 – Create monograph contests about regulation control

- Norms of contest defined
- Number of monographs presented

Action 8 – Promote publication of monographs, dissertations, researches and events in the field of regulation and control.

- Criteria for publication defined
- Publications concluded

Action 9 – Encourage studies and researches in the field of regulation and control.

- Criteria to encourage studies defined.
- Line of studies and research promoted according to criteria adopted by TCU.

Action 10 – Promote events about regulation and control

- 2 (two) events carried out;

⁴ Access to database of libraries and training centers.

1.3 Lack of actions leading to capacity building of technical staff

There is a need to balance basic knowledge in order to work with regulation control. There is also the need to become familiar with models of regulation control adopted for different sectors in different countries.

The difficulties associated to this problem are the little incentive to specialization of the technical staff in TCU and the shortage of experts in the area of regulation of external control.

Action 11 – Define professional skills¹¹

- Model of professional skills in regulation control defined.

Action 12 – Participate in training courses¹³

- Criteria for participation defined.
- Number of events participated in.

Action 13 – Develop models for training and capacity building in external control regulation¹⁵

- Training models developed

Action 14 – Promote specific training activities for SEFID auditors.

- Number of employees trained

Action 15 – Know models of regulation control

- Technical visits carried out

¹¹ Skill is a set of knowledge, abilities and attitudes needed to perform a certain activity.

¹³ Training course is defined in the TCU Resolution # 100/97. It is any activity that produces or disseminates knowledge and that has the purpose of providing professional training or development. 60 training courses at an average cost of US\$2,000 each, with two classes of 15 external control graduate students plus participation of TCU employees in 10 events per each year of the project.

¹⁵ Hiring of senior consultant with expertise in Education to develop a basic training model and a specific model for each area (telecommunications, energy, oil, and highways). 200 working days at US\$250 a day, including per diem.

- Reports about technical visits presented

2. Methods and Techniques of Control – M & T

2.1 Need for development of new M&T as well as for systematization of existing ones.

Due to SEFID's ordinary duties it has not been possible to assign personnel, on a regular and systematic basis, to identify, adapt, and develop M&T that may be used in external control of public services regulation, or to monitor new technical papers and the jurisprudence related to the subject.

Besides the M&T that need to be developed or adapted, there are tools developed by the scope of SEFID and by other technical units in TCU that are ready to be used. However these tools need to be disseminated to the public that carries out external control regulation.

The measures needed in order to solve the issue comprehend: the hiring of consulting firms which would be of two kinds: means - responsible for assisting in the identification, systematization, and dissemination of M&T knowledge; and ends - with expertise in the objects of external control regulation of public services.

Action 16 – Survey existing M & T that are applicable to control of regulation of public services, both within SEFID as well as within the other technical units of TCU.

- M&T identified and published

Action 17 – Suggest preliminary models of regulation control applicable to the objects of greater importance. Test and evaluate them.

- 6 models suggested, tested, and evaluated

Action 18 – Draft reference documents for each one of the models of regulation developed, related to the most important objects.

- Document published for each suggested model

Action 19 – Disseminate and encourage utilization of the M&T developed and surveyed in the project.

- Dissemination events
- Number of auditors trained by area

2.2 Difficulty in accessing data bases of the agencies

There is no knowledge regarding the information contained in these databases, thus it is impossible to evaluate whether they are sufficient and appropriate for the control. Needs. Furthermore, there is no definition of direct access protocols for these data bases nor is there a definition regarding the format of reports that could be useful for TCU monitoring.

Action 20 – Collect information regarding data and systems of the agencies that are under the jurisdiction of SEFID, identify the information and reports that are essential to control, and implement mechanisms of access to information pertaining to the regulators that are necessary for control.

- Systems surveyed by an agency under SEFID's jurisdiction.
- Reports and data defined
- Means of access to data bases defined
- Technological infrastructure defined and implemented
- Security protocols defined.
- Front-ends for data manipulation in the control environment developed.

3. Organization, Administration, and Planning

3.1 The role and extent of TCU's control over the Regulatory Agencies is not clearly defined.

Since the role of the Agencies and the extent of their performance are not well defined (there are overlapped actions between Councils, Ministries, and Regulatory Agencies), it is difficult to define the control to be exercised by the Court.

Action 21 – Survey activities undertaken by regulatory agencies and bodies under the jurisdiction of SEFID.

- Number of agencies that had their activities surveyed

Action 22 – Classify regulatory activities identifying their correlation, redundancies, and gaps and grouping them in order to rationalize control over regulation and define the extent of that control.²¹

- Document addressed to internal²² and external²³ public concluded

3.2 Organizational Model defined for TCU is not clear.

There is an overlap in the actions of control between Secretariats that work with the same clientele but, theoretically, promote different modalities of control²⁴. The role of the other SECEXs (External Control Secretariats) in regulation control is also unclear

Action 23 – Assign activities groups to areas of external control²⁵

- Proposal for assigning activities groups to control areas of TCU

3.3 Uncertainty regarding the ideal structure for the Secretariat.

Know if present structure of SEFID is the most appropriate to achieve its purpose and to maximize the use of human resources that are available.

Action 24 – Draft a document with suggestions to redefine internal structure of the Secretariat (number of divisions needed, number of auditors per division, clientele of each division, and whether or not there will be flexibility of clientele).

- Document with organizational proposal drafted

4. Public Dialogue (Communication)

4.1 Lack of communication strategy/diffusion of regulatory activity control

²¹ The basis for this inventory are the performance audits carried out in these agencies (ANATEL, ANEEL, ANP, ANTT, ANTAQ, Federal Revenue and Post Office)

²² TCU Justices, External Control Secretariat - Segecex and other secretariats

²³ Regulators, Ministries, National Congress, judiciary...

²⁴ SEFID x SECEX: management acts x regulation acts – "end acts"

There is no strategy about what should be made public, how to do it, and who is in charge of diffusion/communication of control (activities, results)

Action 25 – Create in TCU's web site a specific page about privatization. The page should contain major decisions of TCU, basic legislation about privatization - grouped according to the different areas in the Secretariat - and any other important information (researches, papers, news, texts for discussion, etc.).

- Page implemented.

4.2 Not enough rapport with the public in regard to privatization suits.

Action 26 – Identify SEFID's public and their needs in order to define products, actions and specific strategies to reach out to them.

- Diagnosis of SEFID target public concluded²⁸.

Action 27 – Develop Internet web page listing the Court's duties regarding privatization and any other information considered important³⁰.

- Web page implemented
- Page views counted and audited
- Reciprocal links in related pages
- Search tools

Action 28 – Create and disseminate products to publicize the Court's actions

- Product to diffuse actions of TCU and the benefits deriving thereof

Action 29 – Promote actions that stimulate interaction between the Court and its target public

- Meetings with external public

²⁵ Ex. management acts or actions related to monitoring delegations and execution of concession contracts

²⁸ In this report the needs of each interested group should be identified, the products to be developed should be specified, and the channels for distribution defined

³⁰ Develop a specific page on privatization, inside TCU's web site, with major decisions of TCU , basic legislation about privatization - grouped according to the different areas in the Secretariat - as well as important information (researches, papers, news, texts, etc.).

- Exchanges with other control institutions
- Lectures and meetings

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 contributions of GAO for the success of this program could also be beyond the benchmarks of the performance audits conducted in regulatory issues. The Brazilian SAI can learn at least the following procedures and principles adopted by the GAO.

1. Regarding to Auditing standards – the yellow book could be used as a benchmark because it is being demonstrating to be a workable tool in the US. Some concepts adopted by those standards should also be adapted for the Brazilian context.
2. The GAO eagle processes (see annex 1) as a process of planning the engagement
3. The use of the planning matrix has already been adopted by TCU, but new requirements can be incorporated, such as internal stakeholder analysis.
4. Documentation and referencing fundamentals as applied in GAO is a different method of working paper documentation and report review used by TCU but some comparative and cost-benefit analysis can be also done.
5. The way GAO communicates its messages is an effective way to get reports read by relevant stakeholders. In the project at least the highlight page will be introduced in Project pilots and see how can it be applied to the whole organization.

6. Finally, the GAO Writing Principles has lessons to be learnt from TCU that the project will certainly try to incorporate in the Brazilian SAI 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.

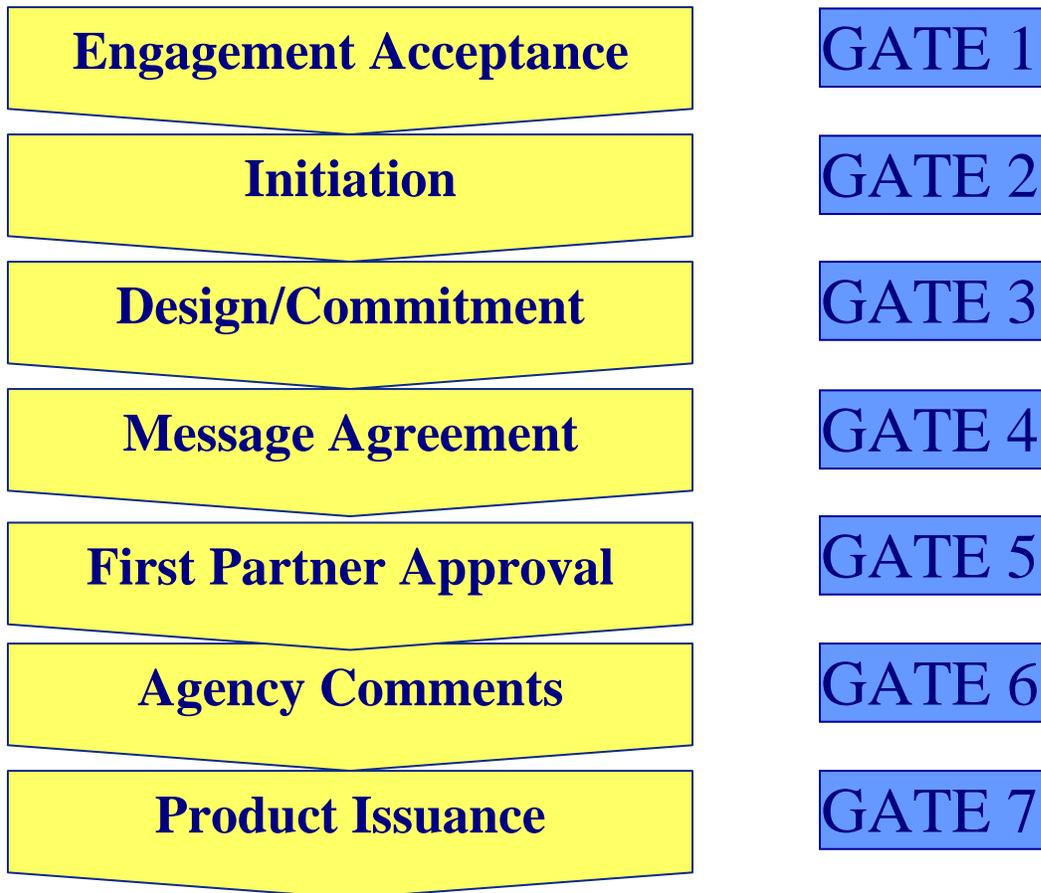
It is argued that Supreme Audit Institutions have a key role for the sustainability and improvement of a sound regulatory regime. The US and Brazilian cases are exemplars in this area of oversight. The latter is trying to build a more systematic approach to the regulatory oversight; the former has created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

6. Acknowledgment

My gratitude for the possibility of participation in this course is immense because it is a unique opportunity to be in contact with so skillful staff as those belonging to the Government Accountability Office. I would like to thank the Comptroller General Mr. David M. Walker and every GAO fellow that I could be in touch during this period because each day was a encouragement to the final goal of trying to build more quality and technique relationship among Intosai members countries participants. The president of my SAI Minister Valmir Campelo is acknowledged because he is making many incentives for TCU personnel to search for professional development. The managing director of the unit responsible for the oversight of regulation in Brasil, Dr. Jorge Pereira de Macedo, and the General Managing Director of the external Control Secretariat of TCU Dr. Luciano Carlos Batista, for their entrepreneur spirit, which is helping to built a TCU image as a model agency in the Brazilian Public Sector. My colleagues Maurício de Albuquerque Wanderley, Marcelo Bemerguy, Adalberto dos Santos Vasconcelos, Maridel Piloto de Noronha, Luciano dos Santos Danni, Carmen Pereira do Rego, Glória Maria Merolla, Sérgio Freitas de Almeida, Sylvia Regina Caldas and my other Sefid and TCU Colleagues for the constant incentives and supportive contacts while my stay in the United States.



GATE	PROCESS	SUBPROCESS
1 Engagement Acceptance	1.1 Receive Request	1.1.1 CR Assigns CCAR Number 1.1.2 CR Sends Request to MD-Team 1.1.3 CR Enters Status in MATS
	1.2 CR Puts Request on EAM Agenda	1.2.1 CR Puts New Requests & Mandates on Agenda 1.2.2 Enter Data on EAM Agenda 1.2.3 CR Prepares and Distributes Final Agenda
	1.3 Evaluate Request to Make Acceptance and Other Key Decisions	---
	1.4 Communicate EAM Decisions Internally	1.4.1 Document Final Decisions 1.4.2 Change Pending Code
	1.5 Communicate EAM Decisions to Requester	1.5.1 CR Sends Decision Letter to Requester 1.5.2 CR Enters Decision Letter Dater in MATS 1.5.3 CR Sends Copy of Letter to MD-Team
2 Initiation	2.1 Start Engagement	2.1.1 Obtain Engagement Code 2.1.2 Staff Job, Identify Stakeholders by Name 2.1.3 Conduct Literature Search 2.1.4 Begin Filling Out Workpaper Set
	2.2 Meet with Requester	2.2.1 Prepare for Meeting 2.2.2 Meet with Requester Staff to Clarify Requester's Needs 2.2.3 Document with Congressional Contact Memo
	2.3 Approval to Proceed with Engagement Design	2.3.1 Prepare JIS Paperwork 2.3.2 Draft Statement of Intent (SOI) 2.3.3 First Partner Approves Job Initiation 2.3.4 Put High Risk Engagement on ERM Agenda
	2.4 Notify Agency	2.4.1 Prepare Notification Letter to Agency 2.4.2 Schedule and Hold Entrance Conference
3 Design Commitment	3.1 Design Engagement	3.1.1 Determine Methodology 3.1.2 Draft Design Matrix 3.1.3 Draft Project Plan 3.1.4 Identify Second Partner 3.1.5 Prepare JIS Job Commitment Paperwork to Continue and Engagement or Start an

GATE	PROCESS	SUBPROCESS
		Engagement Where a Design Phase is not Required
	3.2 Reach an Agreement on Design	3.2.1 Obtain Stakeholders' Buy-in on Design 3.2.2 Revise Design Matrix and Project Plan (as Applicable)
	3.3 Meet with Requester to Reach Agreement on Approach, Product and Issue Date	3.3.1 Prepare Draft Commitment Letter 3.3.2 Meet with Requester Staff to Discuss Approach, Product and Delivery Date
	3.4 Approval to Commit to Product Issue Date	3.4.1 First Partner Approval for Medium and Low Risk Engagements 3.4.2 Approval for High Risk Engagements 3.4.3 Update MATS Form 372
4 Message Agreement	4.1 Gather and Analyze Data 4.2 Develop Message 4.3 Agree on Message 4.4 Determine Product Type 4.5 Communicate with Requester	---
5 First Partner Approval	5.1 Draft Product	5.1.1 Produce Product 5.1.2 Index Draft 5.1.3 Reference Draft and Clear Reference Comments
	5.2 Revise Product	5.2.1 Obtain and Document Stakeholder Concurrence 5.2.2 Conduct and Document Exit Conference 5.2.3 Modify Draft 5.2.4 Edit Draft 5.2.5 Provide Draft and Supporting Material for First Partner
	5.4 Notify ERM	---
6 Agency Comments	6.1 Second Partner Concurrence	6.1.1 First Partner Provides Draft to Second Partner 6.1.2 Second Partner Reviews Draft and Reaches Concurrence with First Partner 6.1.3 Modify Draft Based on Second Partner's Comments (if Needed)
	6.2 Send to Agency	6.2.1 First Partner Approves Product to Go to Agency 6.2.2 Notify Requester 6.2.3 Transmit Draft Product to Agency 6.2.4 Update MATS for Gate 6
	6.3 Notify ERM When Draft is Out	---

GATE	PROCESS	SUBPROCESS
	for Comment	
7 Product Issuance	7.1 Incorporate Agency Comments	7.1.1 Prepare Final Package and Form 115 7.1.2 Modify Draft Based on Agency Comments 7.1.3 Reference Changes 7.1.4 Final Edit
	7.2 Review Treatment of Agency Comments	7.2.1 First Partner Reviews Final Draft and Provides Comments to Team 7.2.2 Notify ERM if Agency Disagreed with Findings 7.2.3 Modify Final Draft Based on First Partner's Comments 7.2.4 First Partner Determines Need for Second Partner Concurrence
	7.3 Final Approval	7.3.1 First Partner Signs Product 7.3.2 CR Concurrence
	7.4 Inform Requester	---
	7.5 Final Processing	7.5.1 Final Processing 7.5.2 Deliver to Requester 7.5.3 Post to Internet 7.5.4 Send to Agency
	7.6 Post-Product Issuance	7.6.1 Complete Engagement Documentation 7.6.2 Documenting Benefits from GAO's Work 7.6.3 Public Affairs and Media Relations

NOTES

ⁱ 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.

ⁱⁱ The British Civil Service recruitment system is still biased by a majority of successful candidates from Oxford and Cambridge Universities.

ⁱⁱⁱ 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.

^{iv} 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.

v 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).

^{vi} 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)

^{vii} 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).

^{viii} 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.

^{ix} 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.

^x An analysis about attempts to use Principal-agent theory to explain real-world behaviour may be found in Arrow (1985). He reaches a conclusion that Principal-agent explanatory power is relatively weak to explain behaviour.

xi Aucoin argues that “chief executives are responsible to ministers for the performance of their departments in providing the outputs that minister purchase thorough an explicit contractual arrangement that binds ministers and chief executives and is transparent in the annual budgetary and parliamentary appropriations process”. (Aucoin, 1995:226)

xii Moore’s analysis is mainly related to the US context. However, a plausible presumption for this argumentation is that public service is inherently moved to create public value, as a private organisation is mainly moved to create profit, at least in democratic and market-oriented countries.

xiii An OECD paper negatively evaluates the impacts of performance pay schemes for public sector managers. It states that, in relation to another survey done in 1993, the mentality of public managers have changed about these payment schemes: From an initial euphoria to disenchantment. The article goes: ‘ performance pay appears to be mismatched to the values and preferred work conditions of many public sector managers... PRP schemes may not be a good fit with the cultures of many public sector agencies.’ (OECD,1997:42-43)

xiv Barzelay rejects this assumption.

xv Barzelay (unpublished paper) links Moore’s strategy to policy analysis, political analysis and administrative and operations analysis. The former refers to substance of a strategy; the second refers to the political authorizing environment to which a strategy is ‘ultimately accountable’ (Moore, 1995:71); and the latter refers to the feasibility of accomplishment by the ‘existing organization with help from other who can be induced to contribute to the organization’s goal’ (Ibid.)

^{xvi} Informational asymmetry is a core justification for a contractual approach within a principal-agency relationship.

xvii Moore identifies five different approaches to political management, including entrepreneurial advocacy, the management of policy development, negotiation, public deliberation and leadership, and public sector marketing (Moore, 1995:151-189).

^{xviii} Moore (35) writes: ‘Yet I see an important conceptual distinction among the techniques and would argue that for most public purposes, program evaluation and cost-effectiveness analysis are the conceptually as well as practically superior approaches’.

xix Empirical evidence among OECD countries indicate 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 demonstrated, as far as possible. But at the same time, *the inherent complexities and limitations of performance measurement in the public sector must be recognised*, so that performance information is used in an appropriate and positive way’ (OECD Performance Management in Government, No 3 1994:92)

^{xx} Boyle (1989:66-71) makes a distinction between performance monitoring systems in areas of high task uncertainty and low task uncertainty. In the former, targets should be concerned with process, focus on monitoring environmental factors, quantitative monitoring of efficiency and qualitative monitoring of effectiveness, feedback by peer group. The latter should be concerned with outputs/outcomes, focus on monitoring achievement against plan, quantitative monitoring of efficiency and effectiveness, and feedback by hierarchical review.

^{xxi} 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).

^{xxii} Underpinning his claim for interagency collaboration, Bardach (1998:11) identifies two main problems that might contribute to loss of public value, namely, pluralism and obsolescence. The former is related to political and institutional pressures that push agencies for “differentiation rather than integration.” The latter is related to the lack of dynamism and flexibility of public agencies in addition to the fact that technical basis for differentiation may blur over time. Arguably, the mission so defined when agencies are created may not respond to “changes in the nature of problems and the availability of solutions- or perhaps changes in our understanding if not necessarily in the realities- make the older pattern of differentiation obsolete”.

^{xxiii} Glynn (1992:68) argues that ‘the role of audit for the NAO needs to be explicated and understood before criticising it. Certainly, as in other countries, the NAO’s audit role is a scrutinising one, a critical element in the discharge of accountability. But, in VFM audit it quite clear has an additional role, that of encouraging and promoting good management’.

^{xxiv} Regulating inside government requires three essential methods: setting standards (a ‘director’), gathering information (a ‘detector’) and modifying behaviour (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).

^{xxv} At this stage, it is worth noting that a cultural bias may be affected by external contingencies. An example is the increasing number of top civil service appointments in Britain that are now publicly advertised and filled by ‘outsiders’.

^{xxvi} 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.

^{xxvii} Power (1997) argues that the administrative attraction of auditing the financial inputs of public services and of defining value for money narrowly in term of ‘cost-effectiveness’ is precisely that the technical and political complexity of defining and measuring outcomes is avoided. Even where problems of outcome definition for complex services can be resolved, the proper use of such measures may indicate and reveal social and economic sub-systems in decline.

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