Contributions to a history of the legal regulation of water in Brazil from the Water Code of 1934*

Aportes para uma história da regulação jurídica da água no Brasil a partir do Código de Águas de 1934

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ABSTRACT

The work contributes do build bases for the legal-historical study on the regulation of water use in Brazil, with special attention to the Water Code of 1934. The research problem is to verify what strategies for regulation in a legal regime to the water use in Brazil during 20th Century, because until now we have so few works in that sense and without a deeply sources' analysis. For this purpose, I collected the historiography on the subject, divided among scholars of related areas such as geography and hydrology, as well as the production of political and social history on the issue and legal-historical on related topics. In addition, I systematized the legislative sources surrounding the Water Code, such as decrees and preliminary legislative

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works. As results, a systematization of the studies and a channelling for the legal elements is obtained, taking into account the permanence in force of the codification in face of a very different regulatory scenario.

KEYWORDS

Water Code — regulatory law — legal history

RESUMO

O trabalho contribui para a construção de bases para o estudo histórico-jurídico sobre a regulação do uso da água no Brasil, com especial atenção para o Código de Águas de 1934. O problema reside em verificar quais as estratégias para a regulação de um regime jurídico para o uso das águas no Brasil ao longo do século XX, porque até então há pouquíssimos trabalhos neste sentido, que não possuem análise aprofundada das fontes. Para tanto, recolhe a historiografia dispersa sobre o tema, dividida entre estudiosos de áreas afins como geografia e hidrologia, bem como a produção da história política e social sobre o tema e histórico-jurídica sobre temas correlatos, além de sistematizar as fontes legislativas ao entorno do Código de Águas, como decretos e trabalhos legislativos preliminares. Como resultado, obtém-se uma sistematização dos estudos e uma canalização para os elementos jurídicos, levando em consideração a permanência em vigor da codificação diante de um cenário de regulação muito diverso.

PALAVRAS-CHAVE

Código de Águas — direito regulatório — história do direito

1. Introduction

Nothing is more vital than water. Although it exists in abundance and in each of the organisms that inhabit it, for certain periods in specific regions, access may be scarce. In modern times, with exponential growth in food agriculture, in the goods and services industry, in energy production and human consumption, through pollution or excess demand, shortages have become greater and more frequent. Transposition of rivers, seawater desalination, sewage treatment and other measures have been taken to curb shortages.

The issue features prominently in the 17 sustainable development goals promoted by the UN, known as Agenda 2030.[1] Two deal directly with water (6 — water drinking and sanitation; 14 — life in the water) and several others indirectly (2 — zero hunger and sustainable agriculture; 7 — clean and accessible energy; 13 — action against global climate change).

All these issues provoke a range of discussion among stakeholders. These interests may be private, related to property that has fresh water, or utilizing water and sewage services, but also collective, as inappropriate use can contribute to climate change that puts life at risk.

Thus, the last century has brought the need to consider possible legal regimes related to water. While literature of the *ius commune* tended to see it as a mere accessory to the land usage question, the rise of the modern state saw regulation of everyday uses in urban spaces. And faced with the consequences of modern life, the question has become part of the national legal debate.

In this sense, there was a lack of study available in the field of legal history to synthesize the debate held over the last century in Brazil.

This paucity is clear when reviewing the literature, both legal or historical. There are specific studies concerned with the history, economy and politics of the Vargas Era or with the formation of the hydroelectric sector and its bureaucracy.[2] In that, the discussions are divided between the dimension of private law (adjacent land ownership, right of neighborhood) and public law (state regulation of water in the energy production sector).[3] The literature on geography and natural sciences is also relevant, but from the perspective of the management of these resources.[4]

In the history of law, specifically, the most pertinent study is that of Thiago Hansen, who, when addressing the Forest Code, presents a broader framework for the legal regulation of the economic exploitation of nature and its relationship with the scientific field.[5]

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1 Available at: https://nacoesunidas.org/wp-content/uploads/2015/10/agenda2030-pt-br.pdf. Accessed on: 23 Jun. 2020.

2 P. ex., CORRÊA, Maria Letícia. Contribuição para uma história da regulamentação do setor de energia elétrica no Brasil: o Código de Águas de 1934 e o Conselho Nacional de Águas e Energia Elétrica. *Política & Sociedade*, Florianópolis, v. 1, n. 6, p. 255-291, 2005.

3 P. ex., ORDÓÑEZ GARCÍA, Juan José. *Do reconhecimento à efetividade do direito fundamental à água: diálogos entre Nicarágua e Brasil*. Dissertação (mestrado em direito) — Universidade Federal de Uberlândia, Uberlândia, 2016.

4 P. ex., SOUZA, Nírvia Ravena de. Trajetórias virtuosas na regulação da água no Brasil: os pressupostos inovadores do código das águas. *Papers do Naea*, Belém, n. 220, dez. 2008.

5 HANSEN, Thiago Freitas. *Codificar e conservar: ciência e pensamento jurídico na formação do Código Florestal Brasileiro de 1934*. Tese (doutorado em direito) — Universidade Federal do Paraná, Setor de Ciências Jurídicas, Curitiba, 2018.

There is also the work of Mariana de Moraes Silveira, which broadly addresses the Legislative Commissions of the Vargas Era.[6] We could also mention the work of Tomaz Esposito Neto,[7] but besides not being a legal historian, he is also limited to the issue of the hydroelectric sector. The idea here is precisely to focus on this vacuum of literature on the important but overlooked issue of the Water Code in a broader sense.

Thus, the objective is to build bases for a historical-legal study on the regulation of water usage in Brazil, with special attention to the *Código de Águas* of 1934, in order to build a general picture of the legal perspectives under discussion in the period.

A historiographic methodology was used in the preparation of this study, which consists of building a reliable narrative from documentation (sources) not previously addressed, in an original way, with re-reading of texts that impact the problem addressed by the research.

We considered disparate material on the topic, found in the available electronic research centres, such as the *Scielo* and *Capes Periodicals* Portals. The scholarship derives from related areas, such as geography and hydrology, as well as the political and social history on the subject and historical-juridical studies on correlated subjects, in order to systematize the fragmentary historiographical debate.

With regard to documents, the criterion used to choose sources was to bring together all the proposals on the legal regulation of water usage, such as the legislative sources of the Code of Waters, and the decrees around it, but mainly preliminary legislation, with projects and explanatory memorandum. These main legislative sources will be considered in detail, in particular the Valadão project, the work of the Legislative Subcommittee, the annual reports of the Ministry of Agriculture and the Annals of the National Constituent Assembly. It was decided not to discuss in more detail the various regulatory decrees on the matter, mentioning only those indirectly linked to the discussion of the analyzed sources, or those mentioned in the literature.

The privileged categories of analysis concern theories about ownership of water, especially accession and dominion. Thus, we do not focus on topics

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[6] SILVEIRA, Mariana de Moraes. *Revistas em tempos de reformas: pensamento jurídico, legislação e política nas páginas dos periódicos de direito* (1936-1943). Dissertação (mestrado em história) — Universidade Federal de Minas Gerais, Belo Horizonte, 2013.

[7] ESPÓSITO NETO, Tomaz. Uma análise histórico-jurídica do Código de Águas (1934) e o início da presença do Estado no setor elétrico brasileiro no primeiro Governo Vargas. *Revista Eletrônica História em Reflexão*, *Dourados*, v. 9, n. 17, jan./jun. 2015.

already analyzed in other works, such as the possibly authoritarian tendencies of the regulatory model of Vargas, or the dogmatics of the various articles of the *Código de Águas*.

Systematization of key studies is sought and their application for the legal aspects, also taking into account the decision to determine a diverse regulation scenario.

2. "Doubt has always hovered over this issue": pre-code legal regulation of water

It is no exaggeration to say that the *Código de Águas* was a dividing line between two regulation models. The republic enforced a privatized model, in that the owner of the land was also the owner of all the resources found in the ground. It reflected, then, the liberal model, with progressive intentions, especially in relation to hydropower.

These rules were a late edition, with the Código Civil of 1916,[8] adding to the 1891 Constitution, which originally only safeguarded the right of navigation.[9] The result was that rivers were considered assets of federated entities, but their tributaries generally the concern of the landowner.

Until then, the largest rivers, navigable and, therefore, with an economic potential, were owned by the Crown (Portuguese and later Imperial), with free use to people and animals.[10] The objective was, on the one hand, to reserve usage when necessary (transport in general, but also in times of war), reflecting, at the same time, a model of "corporate monarchy" in which the king recognized the inability to control everything.[11]

Thus, large bodies of water were in common use for subsistence purposes.

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8 BRAZIL. Law No. 3071, of January 1, 1916. Civil Code of the United States of Brazil: "Art. 66. Public assets are: I. Those of common use by the people, such as seas, rivers, roads, streets and squares […] Art. 526. Ownership of the above and subsoil encompasses what is above and below at all heights and at all depths, useful for their exercise, not preventing work being undertaken at any height or depth, where there exists no interest in hindering them."

9 Only the right of navigation was regulated, whose legislation was concurrent between the Union and states (art. 13), reserving to the National Congress the legislation on interstate and inter-national rivers (art. 34, VI).

10 PORTUGAL. *Ordenações filipinas*. Livro II, Tít. XXVI, §§ 7-8, when it regulates the "royal rights".

11 HESPANHA, António Manuel. *As vésperas do Leviathan*: instituições e poder político — Portugal, séc. XVII. Coimbra: Almedina, 1994.

In the *Ordenações Filipinas*, maintenance of wells, fountains and fountains,[12] protection of fisheries[13] and regulation of rainwater,[14] were established, according to the concept of *polizei*, the beginning of state interference in private life,[15] subsequently regulated in various charters.[16]

In other words, the urban context[17] began to be regulated independently by municipal codes of conduct,[18] while in rural areas organization remained linked to the legal regime of the land. Thus, it is possible to say that Portuguese imperial law and the legislation of the Brazilian Empire already provided for reductions of the owner's right with regard to water resources.[19] In the imperial constitution there are no references to the exploitation of water or other natural resources,[20] only the possibility of expropriation for public utility.[21] According to Valadão, "doubt always hovered over this matter",[22] as

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12 PORTUGAL. *Ordenações filipinas*. Livro I, Tít. LXVIII, when it regulates the position of councillor and the chamber of deputies appointments.

13 Id., Livro V, Tít. LXXXVIII, § 7, which it protected vis-à-vis contraventions.

14 Id., Livro I, Tít. LXVIII, when it regulates the position of Inspector of Weights and Measures. For more, see MACEDO, Danilo Matoso. Urbanização em territórios luso-brasileiros: a urbanização das "Ordenações do Reino". *Paranoá*, Brasília, n. 13, p. 17-26, 2014.

15 "In urban areas, the "polícia" was soon related to the internal management of the city in the aspects that most affected their daily lives. Construction and maintenance of streets, supply of water, urban cleaning, fire prevention, control of weights and measures in the commerce — all this fell within the scope of the urban "polícia". SEELAENDER, Airton Cerqueira Leite. A "polícia" e as funções do estado — notas sobre a "polícia" do antigo regime. *Revista da Faculdade de Direito* — UFPR, Curitiba, n. 49, p. 77, 2009.

16 See, for example, the case of Aqueduto das Águas Livres, of Sintra and Lisboa: CHELMICKI, José Carlos Conrado de. *Memória sobre o Aqueduto Geral de Lisboa*: feita por ordem do Ministério das Obras Públicas em portaria de 15 de fevereiro de 1856. Lisboa: Imprensa Nacional, 1857.

17 CARLES, Marjolaine. Águas de domínio público (Brasil colonial): o caso de Vila Rica, Minas Gerais, 1722-1806. *Varia Historia*, Belo Horizonte, v. 32, n. 58, p. 79-100, jan./abr. 2016.

18 About the question, see, for example, SANTANA, Ana Carolina da Silva. Códigos de posturas municipais: reflexo de um discurso e de suas problemáticas. In: SIMPÓSIO NACIONAL DE HISTÓRIA, XXVII, Natal, 2013. *Anais*… Natal: Ampuh, 2013; VICENTE, Marcos Felipe. O Código de Posturas como instrumento de controle social: reflexões sobre o Código da Vila de Guarany (1898). In: SEMANA DE HISTÓRIA DA FECLESC, XII, 2016, Quixadá/CE. *Anais*… Quixadá, CE: Uece, 2016.

19 Thiago Freitas Hansen, *Codificar e conservar*, op. cit., p. 193.

20 Tomaz Espósito Neto, Uma análise histórico-jurídica do Código de Águas (1934) e o início da presença do Estado no setor elétrico brasileiro no primeiro Governo Vargas, op. cit., p. 5.

21 "Art. 179. The inviolability of Civil and Political Rights of Brazilian Citizens, which is based on liberty, individual security, and property, is guaranteed by the Constitution of the Empire, in the following way. […] XXII. Property Rights are guaranteed throughout, in fullness. If legally verified public interest requires the use, and employment of the Property of the Citizen, he will be previously indemnified for its value. The Law will mark the cases, in which this exception will take place, and it will give the rules for determining compensation." BRASIL. *Constituição Política do Império do Brasil*, elaborada por um Conselho de Estado e outorgada pelo Imperador D. Pedro I, em 25.3.1824.

22 VALADÃO, Alfredo. *Dos rios públicos e particulares*. Belo Horizonte: s.n., 1904. p. 51.

a law of 1828[23] determined a distribution of competences among towns and cities, provinces and the Empire according to the course of the water, while *Ato Adicional*[24] restricted this only to the provinces. The interpretive law of the *Ato Adicional*[25] unwittingly gave rise to another controversy.

The constitution of the First Republic maintained the situation, protecting the property of mines, with regard to the exploitation of springs.[26] Valadão discusses the Civil Code project to show that the proposals to limit ownership of inland rivers to the Union would go against the constitutional text, which claimed ownership only of border rivers.[27] Then, as seen, the Civil Code of 1916 opted for a formula of openness that avoided such discussions.

The possibility of using water for the production of electricity and the need for improvements in water supply in nascent Brazilian metropolises gave impetus to regulation. The legal requirement to make a "waters code for the republic",[28] was put in the charge of Alfredo Valadão. After less than one year,[29] the jurist (who, as seen, had already written on the subject) presented the project and its explanatory memorandum.

In this text,[30] he propounded on the legal nature of water. For Valadão, it was a matter of civil law, not commercial or international. He does not mention administrative law: on the one hand, State intervention in the economy was not a straightforward matter of administrative law;[31] and, at

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23 Lei de 29 de agosto de 1828. Establishes rules for the construction of public works, for the navigation of rivers, opening of canals, construction of roads, bridges, sidewalks or aqueducts.

24 BRASIL *Lei nº 16* de 12 de agosto de 1834. Makes some amendments and additions to the Constitution Policy of the Empire, pursuant to Lei de 12 de outubro, 1832.

25 BRASIL. *Lei nº 105*, de 12 de maio de 1840. Interprets some articles of the Constitutional Reform.

26 Item 17 of art. 72 was revised by the Constitutional Amendment of September 3, 1926, BRASIL. Constituição da República dos Estados Unidos do Brasil (de 24 de fevereiro de 1891), which created items "a" and "b" restricting the sale of such assets to foreigners.

27 Alfredo Valadão, *Dos rios públicos e particulares*, op. cit., p. 68.

28 BRASIL. *Lei nº 1.617*, de 30 de dezembro de 1906. It fixes the general expenditure of the Republic of States of Brazil for the 1907 fiscal year, and provides other provisions: "Art. 35. The President of the Republic is authorized: […] XX. To have the base of the Rural and Forestry Code organized and of Mining and Waters of the Republic, submitting them to Congress for approval in its next session, as well as the registration of roads in traffic in the country and of rivers and waterfalls for application for purposes of public utility, opening for this the necessary credits".

29 BRASIL. Exposição de motivos. *Diário Oficial da União*, Rio de Janeiro, 24 nov. 1907. Seção 1, p. 1.

30 See also VALADÃO, Alfredo. *Bases para o código das águas da República*. Rio de Janeiro: Imprensa Nacional, 1907.

31 On the possibilities of judicial intervention in administrative acts, see FLORES, Alfredo de Jesus Dal Molin; PETERSEN, Raphael de Barros. Os sistemas administrativos, do império à primeira república: os modelos de controle de atos administrativos no Brasil independente. *Revista Brasileira de História do Direito*, Porto Alegre, v. 4, n. 2, p. 75-92, 2018.

the end of the day, a regime of water ownership was not broached, i.e., the possibility of its conversion into economic value.[32]

Valadão understood that a code, not consolidation, was needed as the pre-existing legal scenario offered no constructive guidance. As a particular area, not an entire system of civil or administrative law, a water code escaped the modern scope of codification.[33] But, in fact, it was a fresh issue, as the water regime was more in line with the logic of the previous jurisdictional state, vis-a-vis given norms, rather than that of the legislative state, which recreates the world from its norms.[34]

In classifying water as an asset, we should consider the distinction between res nullius, common things, regulated by the legal regime of regulations, and res alicujus, public things of common use, wherein rivers, for example, are considered property (in this case, public). In this sense, he advocated that the expansion of the public domain, albeit in a relative way, was favourable to the interests of industry, agriculture and shipping: "An intermediate solution, it seems to me, resolves the issue. Leave to the private domain its own areas of interest; bring into the public domain those that really are of public interest".[35]

In this sense, he presented possible mechanisms of water management and economic exploitation: concession, bidding, unionisation. He understood that bidding should function as a base system. Expropriation should only take place in an accessorial way, because in his view, in general, it worked better than competing private interests.

However, as is known, the project did not advance legislatively, and the concession model was the one that prevailed during the First Republic.[36] The regulation model of the 1891 constitutional text implied decentralization.

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[32] On the discussion of property rights at the time, see SALGADO, Gisele M. Discussões legislativas do Código Civil de 1916: uma revisão historiográfica. *Âmbito Jurídico*, v. 96, p. 1-19, 2012.

[33] On what is and is not a code, see GROSSI, Paolo. Códigos: algumas conclusões entre um milênio e outro. In: GROSSI, Paolo. *Mitologias jurídicas da modernidade*. Tradução de Arno Dal Ri Júnior. 2. ed. Florianópolis: Boiteux, 2007. p. 87-114; e PETIT, Carlos. El Código de tránsito no es un código: a propósito de la sentencia C-362/1996, 3 de septiembre, de la Corte Constitucional de Colombia. In *Dret Revista para el Análisis del Derecho*, Barcelona, abr. 2/2014.

[34] FIORAVANTI, Maurizio. Stato e costituzione. In: FIORAVANTI, Maurizio (A cura di). *Lo stato moderno in Europa*: istituzioni e diritto. 10. ed. Roma; Bari: Laterza, 2010. p. 3-36.

[35] Alfredo Valadão, *Bases para o código das águas da República*, op. cit., p. 16.

[36] Maria Letícia Corrêa, *Contribuição para uma história da regulamentação do setor de energia elétrica no Brasil*, op. cit.

According to Borges de Medeiros, for this very reason a water code could not be implemented.[37]

In the absence of regulation on hydropower and inter-federalist provision of the Civil Code,[38] the states exercised broad control over public waterways, with granting power over exploitation and use of waterfalls, leaving the municipalities to distribute energy.[39] During the First Republic, especially until the Great War, foreign capital financed public services such as transport, lighting and water.[40] Although there were small generating plants to attend restricted markets, of municipal scope, distribution of energy was mostly explored by groups such as Light, from Canada, and *Amforp*, from the United States, which controlled 90% of the capacity installed in the country.[41]

3. The "nature of the legal construction in question": legislating *Código de Águas* of 1934

The movement that resulted in the revolution of 1930 defended that, in the matter of water, services should be nationalised.[42] There was also the matter of guaranteeing the state project of colonising the interior of Brazil.[43]

Thus, discussion of *Código de Águas* was resumed with the emergence of the new regime, in the terms of "*tenentism*".[44] The discussion was incorporated

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37 "An illustrative fact serves to show what was wrong with this absolute legislative unity. Until today, it the inexistence of legislation that protects interests against insecurity and a multitude of risks is a sensitive gap in the farming and livestock area. In vain people cry out for a Rural Code, a Water Code, etc. The state interested parties could not legislate on the matter, because the matters are of substantive law and, therefore, pertinent to the exclusive competence of the National Congress." MEDEIROS, Borges de. *O Poder Moderador na República presidencial*. Recife: Edição da S.A. Diário de Pernambuco, 1933. p. 50.

38 BRASIL. *Lei nº 3.071*, de 1º de janeiro de 1916. Código Civil dos Estados Unidos do Brasil: "Art. 65. The assets of the national domain belonging to the Union, the States, or the Municipalities. All others are private, no matter who they belong to."

39 Maria Letícia Corrêa, *Contribuição para uma história da regulamentação do setor de energia elétrica no Brasil*, op. cit., p. 265.

40 Ibid., p. 260.

41 ABREU, Alzira Alves de. Conselho Nacional de Águas e Energia Elétrica [verbete]. In: ABREU, Alzira Alves de et al. *Dicionário histórico-biográfico brasileiro* pós 1930. 3. ed. Rio de Janeiro: FGV, 2010.

42 Maria Letícia Corrêa, *Contribuição para uma história da regulamentação do setor de energia elétrica no Brasil*, op. cit., p. 267.

43 HANSEN, Thiago Freitas. *Imaginários da modernização do direito na Era Vargas*: integração, marcha para o oeste e política indigenista (1930-1945). Dissertação (mestrado) — Setor de Ciências Jurídicas, Programa de Pós-graduação em Direito, Universidade Federal do Paraná, Curitiba, 2014. p. 71.

44 Maria Letícia Corrêa, *Contribuição para uma história da regulamentação do setor de energia elétrica no Brasil*, op. cit., p. 268-269.

into the general plan for new codification, with a subcommittee tasked with drawing up a new project.[45] These commissions should "reformulate all legislation and position the nation on the road to industrial and technical modernity".[46]

This "refoundation of national law" initiated by Vargas, provisionally, was well received among law professionals. Articulation between government and jurists aimed at employing specialized knowledge in the writing of laws.[47] In this joint effort combining policy and technique, there was a preference for codification, to escape the academic convention through "efforts at building a new rational bureaucracy that marked the Vargas government, focused on efficiency and meritocratic criteria in public administration".[48]

In the opening session of the Legislative Commission, Vargas emphasized the moment was "propitious for the execution of a vast reform in the legal and, therefore, social order, given the extraordinary powers of government and the freedom of action it allows [...] subject to the direct criticism of the Nation, the people, through the Press."[49] It was an anti-parliamentary argument that would feature in legislative projects in the provisional government and during the *Estado Novo*.[50]

The answer would be appointment of renowned jurists. In the case of the subcommittee for the Water Code, the chair was delegated to Alfredo Valadão, who, as already seen, had published a monograph on rivers and carried out a codification project. That Valadao was commissioned again in the 1930s shows how it was impossible for a new regime to ignore the past, given that in the law tradition cannot be ignored, as well as the search for the legitimacy among jurists.[51] There was resistance in legal circles, and the emergence of the constitutionalist movement also disturbed the work of the Commission.[52]

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45 BRASIL. *Decreto nº 19.684*, de 10 de fevereiro de 1931. Enacts disciplinary provisions of the Legislative Commission, based in this Capital: "Art. 2nd The subcommittees are made up of: […] 10th — Water Code — Drs. Alfredo Valadão, José de Castro Nunes and Inácio Verissimo de Melo".

46 Thiago Freitas Hansen, *Codificar e conservar*, op. cit., p. 181.

47 SILVEIRA, Mariana de Moraes. Direito, ciência do social: o lugar dos juristas nos debates do Brasil dos anos 1930 e 1940. *Estudos Históricos*, Rio de Janeiro, v. 29, n. 58, p. 443, maio/ago. 2016.

48 Mariana de Moraes Silveira, *Revistas em tempos de reformas*, op. cit., p. 248-249.

49 VARGAS, Getúlio. *A nova política do Brasil*. Rio de Janeiro: José Olympio, s.d. v. I, p. 110

50 NUNES, Diego. *Processo Legislativo para além do Parlamento em Estados autoritários: uma análise comparada entre os Códigos Penais Italiano de 1930 e Brasileiro de 1940*. Sequência, Florianópolis, n. 74, p. 164-170, dez. 2016.

51 Mariana de Moraes Silveira, *Revistas em tempos de reformas*, op. cit., p. 251.

52 Id., *Direito, ciência do social*, op. cit., p. 450.

But, still, during the election period and shortly before the installation of the Constituent Assembly, the subcommittee presented a clear rationale.[53] Describing the works, it stressed the socializing spirit of his first project. In this sense, Valadão accepted the suggestion by Castro Nunes, a member of the subcommittee, that the water subcommittee first study the issue of ownership together with the mining subcommittee.

The questions that arose from study of this last area were unsatisfactory to Valadão as he completed the draft. The water exploitation regime remained open to question, whether by transitory concession or immediate nationalization of the companies.

In fact, the subcommittee started from the previous project of the jurist, including a new chapter on hydraulic power regulation, inspired by US doctrine, including the creation of a *Comissão de Forças Hidráulicas*, like the Federal Power Commission.[54]

Presenting his most recent work on the topic as the repository of doctrinal and comparative law options,[55] he then scrutinized the project. On the control of the federal Union over waters to the detriment of the federated states, he argued that the prevalence of the Union was the best solution for the exploitation of hydroelectric energy. And even if it infringed a constitution principle, which should be the subject of future deliberation, the commission was asked to start working on the issue.

Marine and common waters were regulated as public resources. As for the tributaries, it was decided to classify them separately, as they were regulated as a right of use, unlike springs, which would be private, but protected from abuse of rights. Likewise, with the common good in view, the non-navigable rivers were allocated as public waters. For the shores, he opted for the same solution as for the naval lands, i.e., to make them public, safeguarding the right of use by riverside communities and landowners.

Hydroelectric power took up most of the discourse. Initially, he justified the need to change the regime ownership, complaining at times of the "egoism" and the "lack of capital and associative spirit" of the river populations, which would also prevent energy development, in addition to exhaustive disagreements between states (which until then owned the main rivers).

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[53] BRASIL. Exposição de motivos. *Diário Oficial da União*, Rio de Janeiro, 23 de maio 1933. p. 10.316.

[54] VENÂNCIO FILHO, Alberto. Código de Águas [verbete]. Alzira Alves de Abreu et al., *Dicionário histórico-biográfico brasileiro pós 1930*, op. cit.

[55] VALADÃO, Alfredo. *Direito das águas*. São Paulo: Revista dos Tribunais, 1931.

Here Valadão returns to the discussion about the nature of codification of the new legislation. Here, he is not concerned with the distinction between codification and consolidation, the newness or otherwise of the content, but codification and regulation. In this case, what was at stake were perpetuity provisions, not to be confused with organizational norms, "however, as far as the nature of the legal construction allowed: a code [...] considered a limit of precepts, should be the expression of principles of greater stability",[56] the norms of administrative law, on the contrary, must have greater dynamism.

Concerning the legal regime for hydroelectric use, in agreement, the new version of the project gave preference to the concession system, expanding federal control of hydraulic forces and the banks of streams.

In the first instance, it was contrary to the first version that came to the consortium (or "union association"), vis-a-vis the best alternative option for companies and riverside dwellers, for the reasons described above. Secondly, we should note the Weimar experience as an alternative to the disputes between states, just discussed, as a "rationalized federation". Thirdly, the question of Federal possession had been ensured by a decision of the Federal Supreme Court, by the Attorney General of the Republic Epitácio Pessoa.[57]

Valadão went on to explain the work policies of these "commissions of hydraulic forces" (which would materialize as the Conselho Nacional de Águas e Energia Elétrica), highlighting the sense of "proceeding as direct public agencies" with simultaneously "legislative" (establishing tariffs), "executive" (inspection) and "judicial" (resolving conflicts between State and companies) roles. So much so that the jurisdictional control could not be on the merits of its decisions, only on the legality of the acts.

Finally, he explained the proposed transitional regime for explorations underway, which should adapt to the new modality of concessions, under penalty of being taken over by the Union, demonstrating the clarity of the objective of greater state intervention in this economic area. Valadão then discussed the amendment suggestions made by commission member José de Castro Nunes. These concerned, especially, the expansion of the federal public domain with a view to exploitation of the "white coal".

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[56] Brasil, *Exposição de motivos*, op. cit., p. 10.319.

[57] PESSOA, Epitácio. *Terrenos de Marinha: ação de reivindicação movida pelos estados da Bahia e do Espírito Santo contra a União Federal*: razões finais oferecidas em defesa dos direitos da União. Rio de Janeiro: Imprensa Nacional, 1904.

Regarding the public domain of water, Valadão mentioned the various French and Italian authors and comparative legislation in Argentina, Germany and the United States discussed by Castro Nunes. Valadão complained that the identification of "headwater" of the "rivers" left out several other waters, such as "creeks, streams, brooks", which enter into the concepts of "waterways" and "channels".

Regarding the federal domain of waters, Castro Nunes was of the opinion that all rivers should belong to the Union. Valadão, in view of the limitations of the 1891 Constitution, presented an intermediate proposal, always giving preference to the federal domain, with the necessary reservations that the constitution should be respected.

Valadão concludes by highlighting the challenges of carrying out such an undertaking. In summary, the controversies on the subject are not new, preventing approval at the beginning of the century. It was still one of the thorniest topics of the legislative commission established after the 1930 Revolution. Technical complex, it involves several branches of law and new questions for legislation, besides the economic significance, especially with regard to regulating the exploitation of hydroelectric energy. He left the table open for suggestions from the other members of the subcommittees and external players, vis-a-vis publication of this phase of the work. Soon after, the National Constituent Assembly opened,[58] which was decisive for the technical options considered.

4. A "necessary, essential innovation": between the Constitution of 1934 and the Water Code

Here, we should note the importance of Juarez Távora, the most senior representative of the group of lieutenants in the government, who as Minister of Agriculture presided over definitions of ownership of natural resources. He was appointed by Getúlio Vargas to administer the legislation of Forestry, Mines, Hunting and Fishing and regulations, besides Water resources.[59]

Távora was particularly opposed to the access to natural resources regime of the Constitution of 1891 and the Civil Code of 1916, which gave landowners rights to the subsoil broadly, with individual assignment of such

[58] BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1935-1937. v. XXII [1933-1934]

[59] Thiago Freitas Hansen, *Codificar e conservar*, op. cit., p. 110-111.

rights, even though accession was "supported in Western legal culture long before liberalism, at least since Acursio".[60]

The matter of water was always of general interest. The reports from the Ministry of Agriculture registered the work that had already begun[61] and already in the *Anteprojeto da Comissão do Itamaraty* the subcommittee's concern to increase Union scope for dominance over the waters was clear.[62]

At the beginning of the debates, some were against any regulation on waters in the constitutional text, such as deputy Homero Pires, vis-a-vis expansion of the "super-legality" of the welfare state.[63] Others, such as João Simplício, complained about the loss of autonomy of the states with federal dominion of the waters.[64]

Juarez Távora responded to the criticism by stressing that "socializing the wealth of natural resources, such as mineral deposits and waterfalls, transforming them into inalienable patrimony of the Nation" supported "individual rights, secured by the pact here in elaboration."[65] According to the minister, "socializing" was more appropriate than "nationalizing", as the objective was to share with the whole nation the fruits of water resources, such as hydroelectric power. In the latter case, the regime, unlike in other South American countries, allowed waterfalls to fall into the hands of foreign companies at a low price.[66] In fact, even opponents, like Roberto Simonsen, recognized that the constitutional regulation of exploration of waterfalls was an attempt to insert the notion of "social rights" extracted from the constitutions of Germany and Mexico, in addition to the recent republic in Spain.[67]

Cincinato Braga's partial report on the economic order assigned federal control of the public domain as a general rule, to further hydroelectric development. The rule applied to rivers bordering other nations or interstates, leaving the local waterfalls in state hands, as they generally serve more than one municipality. Individuals were granted rights over small falls contained

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60 Ibid., p. 127.
61 BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1935. v. I [1933], p. 96.
62 Brasil, *Anais da Assembleia Nacional Constituinte*, op. cit., v. I, p. 134
63 BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1935. v. II [1933], p. 26-28.
64 Brasil, *Anais da Assembleia Nacional Constituinte*, op. cit., v. II, p. 310.
65 Brasil, *Anais da Assembleia Nacional Constituinte*, op. cit., v. II, p. 366.
66 Brasil, *Anais da Assembleia Nacional Constituinte*, op. cit., v. II, p. 367-368.
67 Id. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1935. v. VII [1934], p. 85-88.

inside their properties.[68] The final rapporteur on the economic and social order, Euvaldo Lodi, presented a substitute for the draft that, among other things, regulates the concession regime, with the exception of the renationalization of waterfalls considered strategic, a new item which he inserted.[69] Vasco de Toledo had a similar opinion.[70]

In the middle phase of the Constituent Assembly, we saw an intense debate on ownership of mines, including waterfalls. Raul Sá defended maintenance of the accession regime, established in the First Republic. The federal regime was defended (as already seen) by Euvaldo Lodi.[71] The debate, which presented the various regimes (privilege and *res nullius*) in comparative law, culminated in the statement of Pedro Aleixo: "The principle we are going to vote on is that of limitation of property rights".[72] Sá also complained that several competences were left to ordinary law — here, in this case, the Water Code under construction. For this reason, he presented a substitute, to maintain the accession regime, protecting the autonomy (and the finances) of the states.[73] In his later manifestation, Minister Távora reinforced the need to reformulate the model to advance the Brazilian economy.[74] Debates by parliamentarians on *Código de Águas* project in the First Republic were also requested for publication.[75]

At another instant, the Minas Gerais contingent presented opinions from the associations of lawyers in São Paulo and Minas Gerais, asking for replacement of items on the property regime (public and federal) for waterfalls and mines according to the discipline of the 1891 Constitution. According to Deputy Jaques Montandon, this was "an exaggerated Jacobin susceptibility, an exaggerated patriotic itch, in the face of innocent, progressive grassroots initiatives".[76] This was, apparently, an indirect reference to the initiatives of Juarez Távora.

Not by chance, the minister returned to the charge against the substitute project of the 26th Commission and, taking advantage of ministerial privilege,

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[68] Id. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1936. v. X [1934], p. 247-248.
[69] Ibid., V. X, p. 491-495.
[70] Ibid., p. 507 e 557.
[71] Id. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1936. v. XIII [1934], p. 195-205.
[72] Ibid., p. 199.
[73] Ibid., p. 272.
[74] Ibid., p. 347.
[75] Ibid., p. 390.
[76] Id. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1936. v. XIV [1934], p. 75.

provided for in the Constitution,[77] reiterated the need for the nationalization of waterfalls. According to him: "It is, effectively, a legal innovation; but a necessary, essential one".[78] In this sense, he takes up the suggestions of deputy Lodi, that retaining them is better than returning to the accession system. His fight was against the Minas Gerais position in favour of maintaining ownership of the subsoil and the waterfalls, as well as the general opposition that wanted to keep the federalist regime in its radical form. Therefore, he presents amendments to replace the Union as the apex in regulation, sharing ownership and coordinating actions together to the states.

Távora published as an annex to his speech a series of documents pertinent to the legal regulation of waters. He presented a questionnaire on the accession regime, showing that it was a republican innovation, of little benefit in the Brazilian scenario.[79] He also collated a series of excerpts from foreign constitutions that make use of the dominial regime — federations such as Switzerland, Argentina and Mexico.[80] He also presented a study carried out by the *Serviço de Águas do Ministério da Agricultura* on the "reasons for which the Union must be responsible for regulating the use of hydraulic energy",[81] which shows that, to achieve interconnection of networks federal law is necessary, and again there are examples of countries unified in federations, including the United States and Germany, which have a regulatory body. To exemplify the reason for the opposition to the current system, a concession was agreed upon for the water resources of Natal. In it, the state of Rio Grande do Norte renounced "without restrictions" control of waterfalls and springs, in the state and municipalities. In the words of José Oriano Menescal Neto, technical assistant of the Water Service, the "State grants favours, rights and guarantees without fully understanding which or where".[82] This is followed by cases in Alagoas, Bahia, Espírito Santo, Minas Gerais, São Paulo, among others, including requests for contractual reformulation. Afterwards, texts by Alfredo Valadão are presented, from his books and from discourses on the projects of 1919 and 1933.

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77 Id. *Decreto nº 22.621*, de 5 de abril de 1933. Provides for the convening of the Constituent National; approves its Internal Regulations; pre-fixes the number of deputies to it and gives other measures.

78 Id, *Anais da Assembleia Nacional Constituinte*, op. cit., v. XIV, p. 176.

79 Ibid., p. 192-194.

80 Ibid., p. 195-200.

81 Ibid., p. 200-202.

82 Ibid., p. 218-237.

After these discussions, deputy Furtado de Meneses presented a written discourse on the ideas of Lodi, Sá and Távora, in complete opposition, understanding that the regime of *res nullius* would be the best alternative to accelerate the exploitation of mines and waterfalls.[83]

In another session, Távora again discussed the proposals for substitutes, demanding the creation of obstacles to the Legislative Power of the Union on the matter, which would only interest companies currently engaged through "leonine contracts", against the public interest.[84] Next, he recalled the various documents collected for his last intervention as proof of the need to accept his propositions, arguing that the management of states, which, on the one hand, accepted harmful conditions and on the other, tried to compensate with abusive taxation, led to the stagnation of the sector. The minister stated that the recovery began after the revolution, to the point that it begged (or perhaps, ironically, challenged) for the acts of the provisional government on the subject be reviewed — in fact, it asked that this process not be given over to the Judiciary, which would be unaware of the political issues surrounding the matter.[85]

São Paulo deputy Alcântara Machado, a staunch critic of the new regime,[86] spoke against the grain. In his argument, he argued that, compared to the text of the 1891 Constitution, the possibility of expropriation and legislative competence being the only powers of the Union in the matter of water, would be an advance for the current regime. So, the alternative shouldn't be a reason to "scream so much". On the contrary, he claimed that "the Union is insatiable" in wanting to control all waters, public and private, great or small: "There is not enough water to satisfy its thirst."[87] In an extended discourse, Prado Kelly criticized the posture of the supporters of the alternative.[88]

In reaction, deputy Pedro Aleixo argued that if such an amendment succeeded, all the work of preparing the Código de Águas by Alfredo Valadão would remain unusable due to the invasive competence of the states. Furthermore,

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83 Id. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1936. v. XV [1934], p. 177-184.

84 Id. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1936. v. XVI [1934], p. 186-188.

85 Ibid., p. 188-200.

86 This, however, did not prevent him from collaborating with the ensuing Estado Novo regime; summoned by Francisco Campos he created the codification project that, which, with many changes made by the review committee headed by Nélson Hungria, became the penal code of 1940. On the matter, see Diego Nunes, *Processo Legislativo para além do Parlamento em Estados autoritários*, op. cit., p. 153-180.

87 Brasil, *Anais da Assembleia Nacional Constituinte*, op. cit., v. XVI, p. 315-317.

88 Ibid., p. 337-339.

he was critical that the proposition "copied badly, and amended the project without meeting our national interests", referring to the Spanish model.[89]

Thereafter, several proposed amendments were presented: Daniel de Carvalho presented two amendments to leave the interstate rivers and their shores in the hands of the Union;[90] Mario Ramos presented an argument that the Union has legislative competence only when the river is interstate.[91] Deputy Carvalho, on behalf of the Minas Gerais delegation, saying he had asked Alfredo Valadão directly for the suggested, even if though partially disagreeing, such as the issue of control of river banks, with the exception of what would eventually be set out in the code.[92] As a reaction, there were fresh amendments as to the Federal public domain.[93]

In the final phase, amendments were suggested by Euvaldo Lodi and others. Lodi was responsible for the opinions on the acceptance of the amendments, with Amendment No. 429 consolidating regulation of the matter.[94] The limitations on the Union's competence were systematized[95] and then put to vote. Pedro Aleixo asked that this highlight be inserted,[96] reiterated by Euvaldo Lodi and Daniel de Oak. The former feared that "Brazil would be without a water code",[97] a concern shared by the latter, given that the first draft was prior to the approval of the Civil Code, and gaps remained in view of the future approval of specific legislation on water.[98] Thus, the assembly

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89 Ibid., p. 379-380.

90 Id. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional. 1936. v. XVII [1934], p. 37-39.

91 Ibid., p. 113.

92 Ibid., p. 267-270.

93 Brasil, *Anais da Assembleia Nacional Constituinte*, op. cit., v. XVI, p. 300-301, 311.

94 Id. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1937. v. XIX [1934], p. 256-258.

95 "II — Matters in which federal competence is restricted in amendment n. 1945, and restricted or excluded in the Substitute: […] c) Water. The amendment restricts the federal competence to 'hydraulic exploitation', whenever water or transport of energy 'interests more than one State'. The Substitute kept the same formula, adding 'or to Union services'. The caveat is insufficient. In full force of the Constitution of 91, the Federal Government and Congress sought to draft a Water Code, which is essential, and which now precisely is almost ready." BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1937. v. XX [1934], p. 193-194.

96 Ibid., p. 227.

97 Ibid., p. 228.

98 "When, Mr. President, the Federal Legislature voted on the Civil Code, at the same time, the Water Code was being drafted; so that the authors of the Civil Code left a huge path to be trodden by those who were in charge of elaborating the Water Code. To date, however, this code has not been promulgated, making it essential that the Federal Legislature has the power to legislate on water, generally". Ibid., p. 229.

approved the legislative competence of the Union. The final text, within the chapter on economic and social [99] went to the vote, and was approved with the caveat that waterfalls be identified as a distinct part of the land.[100]

In the final sessions, the last adjustments were made, such as the inclusion of a transition clause on current contracts.[101] An attempt was also made to insert a clause imposing a duty on the Union to exploit electrical energy and provide it at minimum to the population, but rejected in view of the rules operating guidelines already agreed.[102] Two questions were recurrent historically, but were hardly mentioned alongside with water regulation: droughts in the Northeast and the rates for water and sewage services. The first case concerned the actions of the provisional government, unrelated to the debates brought by Valadão, for example, who understood federalization of intermittent rivers as a strategy for the issue. The second case, generally speaking, refers to the finances of municipalities and the autonomy of the Federal District.

Finally, in the supervision of the Ministry of Agriculture under Távora, in the commissions of the National Constituent Assembly, there was an understanding of the primacy of public and federal water control, according to the Water Code of the legislative subcommittee,[103] which meant a real break with the current state of affairs. In the second case, "Despite the fact that the 1933 Constituent Assembly was the most creative we have had, the real

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[99] "Art. 2. The industrial use of mines and mineral deposits, as well as water and of hydraulic energy (on public or private land), depends on authorization or federal concession, in the form of ordinary law. (Amendment n. 429.) § 1 The authorizations or concessions will be granted exclusively to Brazilians and companies organized in Brazil, subject to the respective owner and their preference in the utilization or co-participation in the results. (Amendments numbers 429 and 1951.) § 2 The use of hydraulic energy, in reduced power and for the exclusive use of the respective owner, regardless of authorization or concession. (Amendment n. 429.) § 3 The Union will transfer to the States, subject to the conditions stipulated by law, and after having the necessary technical and administrative services, the attributions contained in art. 2, within their respective territories. (Amendments nos. 429 and 1849.) § 4 The mines and other subsoil resources, as well as waterfalls or other sources of hydraulic energy, constitute properties distinct from those of the soil. (Amendment number 429.) § 5 The law will regulate the progressive nationalization of mines, mineral deposits and waterfalls, or other sources of hydraulic energy, deemed basic or essential to the economic or military defence of the Nation. (Substitute.) § 6 The Union will assist the States, in view of the interest of the community, in convenient study and provision of equipment for the mineral-medicinal and spa resorts, in the cases provided for by law. (Amendment No. 1951.)" BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1937. v. XXI [1934], p. 484.

[100] Ibid., p. 487-488.

[101] Id. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1937. v. XXII [1934], p. 107.

[102] Ibid., p. 137-142.

[103] Thiago Freitas Hansen, *Codificar e conservar*, op. cit., p. 128 e 130.

political situation, and not the theoretical one, was frankly unfavourable to any apparently decentralising measure of power."[104]

In the 1934 Constitution, the Union gained legislative monopoly over water[105] with a profile distinct from that of land.[106] Even when the water sources were private property, they needed authorization from federal government (except for acquired rights), granted only to Brazilians, with the objective of nationalizing all strategic waters.[107] This was a nationalistic and innovative vision.[108]

5. If "it becomes necessary to modify this state of affairs": *Código de Águas* of 1934

Távora managed to engender the Código de Águas[109] (which regulated mineral water sources) as well as the Código de Minas.[110] To this end, Vargas

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[104] LYNCH, Christian Edward Cyril. O Poder Moderador na Constituição de 1824 e no anteprojeto Borges de Medeiros de 1933: um estudo de direito comparado. *Revista de Informação Legislativa*, Brasília, a. 47, n. 188, p. 110-111, out./dez. 2010.

[105] BRASIL. *Constituição da República dos Estados Unidos do Brasil (de 16 de julho de 1934):* "Art. 5 — It is the exclusive responsibility of the Union: […] XIX — to legislate on: […] j) federal property, underground resources, mining, metallurgy, water, hydropower, forests, hunting and fishing and its exploitation; […] § 3 — The federal competence to legislate on […] underground resources, mining, metallurgy, water, hydropower, forests, hunting and fishing, and their exploitation does not exclude supplementary or complementary state legislation on the same. State laws, in these cases, may, taking into local peculiarities in account, supply the gaps or deficiencies of federal legislation, without waiving its requirements".

[106] Ibid. "Art. 118 — Mines and other subsoil resources, as well as waterfalls, constitute a property distinct from that of the soil for the purpose of exploitation or industrial use."

[107] Ibid. "Art. 119 — The industrial use of mines and mineral deposits, as well as of water and hydraulic energy, even if private property, depends on authorization or federal concession, as provided by law. § 1 — Authorizations or concessions will be granted exclusively to Brazilians or companies organized in Brazil, excepting owner preference for utilization or profit sharing. § 2 — The use of hydraulic energy systems with reduced power are for the exclusive use of the owner, regardless of authorization or concession. § 3 — Once the conditions established by law are satisfied, among which the necessary technical and administrative services, the States will begin to exercise, within their respective territories, the assignment contained in this article. § 4 — The law will regulate the progressive nationalization of mines, mineral deposits and waterfalls or other sources of hydraulic energy, considered basic or essential to the economic or military defence of the country. § 5 — The Union, in the cases prescribed by law and with a view to the interest of the community, will assist States in the study and rigging of mineral-medicinal or thermos-medicinal resorts. § 6 — The use of waterfalls, already used on the date of this Constitution, applies, and, under the same exception, the utilization of mining operations, even if temporarily suspended."

[108] Nírvia Ravena de Souza, Trajetórias virtuosas na regulação da água no Brasil, op. cit., p. 4.

[109] SILVEIRA, Mariana de Moraes. Técnicos da legalidade: juristas e escrita das leis (Argentina e Brasil, primeira metade do século XX). *Estudios Sociales Contemporáneos*, v. 17, p. 97, 2017.

[110] BRASIL. *Decreto nº 24.643*, de 10 de julho de 1934. Decreta o Código de Águas.

made use of the revolutionary legislative power, as head of the provisional government,[111] one of the few achievements of the Legislative Commission of the provisional government, in the face of the major reforms carried out by Francisco Campos in Estado Novo.[112] If laws such as this cannot be fully attributed to the work of the subcommittees — see Távora's on the works of Valadão, in the same way they cannot be completely dissociated. These decrees (Mines and Waters), entered into effect a few days before the promulgation of the Constitution, becoming milestones in the consolidation of an interventionist State in Brazil.[113]

Despite coming into force on July 10, 1934, before the work of the Constituent Assembly concluded, on 14 July, publication in the Official Gazette[114] occurred 10 days after issue by the provisional government - six days after the new Constitution.

In view of this, a suggestion was made that the decree would be unconstitutional as, if instituted after the 1934 Constitution, it would be subject to ordinary legislature. The Federal Supreme Court resolved the matter,[115] based on constitutionality: "The Water Decree is not unconstitutional, despite its belated publication. Thus, the Judge, who considered null and void the fiscal executive activities, should evaluate the case on its merits".[116]

The central argument presented by rapporteur, Minister José Linhares, with unanimity among the collegiate, was differentiation between enactment and publication. This would provide publicity and knowledge of the broad scope of the law, ensuring the validity of the legal norm. At most, according to the vote of Minister Carlos Maximiliano, it would not be mandatory, meaning violation would be excusable by ignorance.

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[111] BRASIL. *Decreto nº 19.398*, de 11 de novembro de 1930. Establishes the Provisional Government of the Republic of the United States of Brazil, and makes other provisions. "Art. 1. The Provisional Government exercise, in its discretion, in all its fullness, the functions and attributions, not only of the Executive, as well as the Legislative Power, until the Constituent Assembly is elected, establishing the constitutional reorganization of the country."

[112] Mariana de Moraes Silveira, *Revistas em tempos de reforma*s, op. cit., p. 258; Diego Nunes, *Processo Legislativo para além do Parlamento em Estados autoritários*, op. cit., p. 170-174.

[113] DEL PICCHIA, Lucia Barbosa. *Estado, democracia e direitos na crise do constitucionalismo liberal: uma comparação entre o pensamento jurídico francês e o brasileiro*. Tese (doutorado em direito econômico e financeiro) — Faculdade de Direito, Universidade São Paulo, São Paulo, 2012. p. 205.

[114] BRASIL. *Código de águas*. Diário Oficial da União, Rio de Janeiro, 20 jul. 1934. Seção 1, p. 1.

[115] BERCOVICI, Gilberto. Direito econômico do petróleo e dos recursos minerais. São Paulo: *Quartier Latin*, 2011. p. 92-99; Alzira Alves de Abreu, *Dicionário histórico biográfico brasileiro pós 1930*, op. cit.

[116] BRASIL. Supremo Tribunal Federal. *Agravo de Instrumento 7.880*. Relator(a): min. José Linhares. Julgamento: 1º/6/1938.

But, according to Minister Costa Manso, as the normative form was a decree, there would be immediate application, since the act is the result of a single power (Executive), unlike the laws coordinated between the Legislative and Executive. Minister Carvalho Mourão compared the legislative act with a jurisdictional act: enactment would be for the pronouncement of a judgement as well as publication of the legal decision. Eduardo Espínola added that, at most, the decree should be considered *in vacatio legis*.

Thus, the text of the decree and the constitution came into force practically together, coordinating basic principles, "especially with regard to nationalist purposes and administrative centralisation".[117]

The brief *Exposição de Motivos* by Minister Távora, presented with publication of the decree,[118] celebrates the coordination between the legal text and the Constitution, announces that the question of exploiting hydroelectric potential would be his own, on top of the work of Valadão,[119] and highlights the possibilities for economic development and national defence.

The text of *Código de Águas* was added to a series of preliminary considerations that are very illuminating in this regard:

> Considering the use of water in Brazil has been governed by obsolete legislation, out of step with the needs and interests of the nation;
>
> Considering the need to modify this state of affairs, providing the country with adequate legislation that, according to the current trend, allows and encourages public control, and motivates industrial use of water;
>
> Considering, in particular, hydraulic energy requires measures that facilitate and guarantee their rational use;
>
> Considering that, with the reform, because the services are related to the Ministry of Agriculture, the Government is equipped, through its competent authorities, to provide technical and material assistance, essential to achieving these goals [...]

Like the Constitution, codification established the dissociation between the ownership of the soil and the water flowing in it.[120] The decree

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[117] Maria Letícia Corrêa, *Contribuição para uma história da regulamentação do setor de energia elétrica no Brasil*, op. cit., p. 269.

[118] BRASIL. *Código de águas*. Diário Oficial da União, Rio de Janeiro, 20 jul. 1934, Seção 1, p. 1.

[119] In the contrary sense, that this issue is the work of de Valadão, see Nírvia Ravena de Souza, *Trajetórias virtuosas na regulação da água no Brasil*, op. cit., p. 6.

[120] Maria Letícia Corrêa, *Contribuição para uma história da regulamentação do setor de energia elétrica no Brasil*, op. cit., p. 260.

considers water as both an essential element for life and for development. On the one hand, it dealt with individual rights and established rules on community relations between users; on another, it regulated the generation and distribution of hydroelectric power. To that end, it promoted the centralization of power, instrumentalizing the State to exercise control over this activity.[121]

Access to water should be guaranteed to all people. The decree called for "common waters for all" those, intended for the "primary needs of life", determining its gratuity and freedom of access, imposing a specific modality of service (arts. 34 and 35).[122] Likewise, "public waters" were universally accessible, with preference given to the supply of populations (art. 36). It is worth noting that, although free use of public waters had long been established in Brazil, the Code provided for the possibility of non-gratuity.[123]

At the same time, for the economic utilization of water, especially for the management of the hydroelectric potential, there was a need for regulation, so that the State effectively played the leading role in the project for the new codification. Although the arrangement was innovative, its implementation depended on the establishment of institutions that could comply with the regulatory model proposed by the decree.

With the *Estado Novo* and the 1937 Constitution, the concessions became even more rigid: foreign companies could no longer exploit the hydraulic potential, reserved only for Brazilians or companies constituted by Brazilian shareholders.[124] However, in 1942, in the context of Brazil's alignment with

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[121] SILVESTRE, Maria Elisabeth Duarte. Código de 1934: água para o Brasil industrial. *Revista Geo-Paisagem*, a. 7, n. 13, jan./jun. 2008.

[122] Nírvia Ravena de Souza, *Trajetórias virtuosas na regulação da água no Brasil*, op. cit., p. 4.

[123] Maria Elisabeth Duarte Silvestre, *Código de 1934*, op. cit., s.p.

[124] BRASIL. *Constituição dos Estados Unidos do Brasil, de 10 de novembro de 1937*. "Art. 14 — distinct from land ownership for the purpose of industrial exploitation or exploitation. The industrial use of mines and mineral deposits, water and energy hydraulics, although privately owned, depends on federal authorization. § 1 — The authorization can only be granted to Brazilians, or companies formed of Brazilian shareholders Brazilians, with preference in utilization, or profit sharing, reserved for the owner. § 2 — The use of reduced power hydraulic energy and for exclusive use of the owner without authorization. § 3 — Satisfying the conditions established in law, including that of having the necessary technical and administrative services, the States shall exercise within their respective territories, the attribution contained in this article. § 4 — The use of waterfalls already used industrially does not require authorization on the date of this Constitution, and, under the same conditions, the exploitation of mines in mining, even if temporarily suspended."

the Allies in World War II, the constitution was amended to return to the 1934 regime, authorizing concessions to foreign companies based in Brazil.[125]

But the following years saw institutionalization diverge from the legislative model,[126] even though in the period State intervention was multiplied.[127] To this end, a national Water and Electricity Council was created (CNAEE),[128] one of the many regulatory bodies of the Estado Novo. Its objective was the implementation of water supply policies, as well as generation and distribution.[129] The CNAEE only lost importance with the creation of the Ministry of Mines and Energy[130] (in which it was incorporated) and, especially, *Eletrobras*.[131] A bureaucratic body[132] directly linked to the president of the republic, its function was supplementing strategic decisions, including tariffs.[133] But, in practice, after the reform of the Code in 1938 — further centralizing normative power[134] — until 1945, while Congress remained closed, the council exercised control, especially on the economic-financial regime, such as listing the assets and facilities of the companies.[135]

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[125] BRASIL. *Lei Constitucional nº 6, de 13 de maio de 1942*. Amends § 1 of art. 143 of the Constitution: "§ 1 — The authorization will only be granted to Brazilians, or companies formed of Brazilian shareholders, and the Government may, in each case, as a matter of public convenience, allow the use of waterfalls and other sources of hydraulic energy for companies that already exercise use § 4, or those that organize themselves as national companies, with preference of untilization or participation in the profits always reserved for the owner". Remember that the "constitutional laws", as well as the decree-laws of the Estado Novo, were unilateral acts of Vargas, based on art. 180 of the 1937 Constitution, which provided, provisionally, presidential legislating powers until parliament was summoned by him, which did not occur until the fall of the regime.

[126] Nírvia Ravena de Souza, *Trajetórias virtuosas na regulação da água no Brasil*, op. cit., p. 5.

[127] Maria Elisabeth Duarte Silvestre, *Código de 1934,* op. cit., s.p.

[128] BRASIL. *Decreto-Lei nº 1.285*, de 18 de maio de 1939. Creates the National Council of Waters and Energy, defines its attributions and makes other provisions.

[129] Alzira Alves de Abreu, *Conselho Nacional de Águas e Energia Elétrica* [verbete], op. cit.

[130] BRASIL. *Lei nº 3.782,* de 22 de julho de 1960. Creates the Ministries of Industry and Commerce and Mines and Energy, and other measures.

[131] BRASIL. *Lei nº 3.890-A,* de 25 de abril de 1961. Authorizes the Union to set up the company Centrais Elétricas Brasileiras S. A. — ELETROBRAS, and makes other provisions.

[132] Nírvia Ravena de Souza, *Trajetórias virtuosas na regulação da água no Brasil*, op. cit., p. 12.

[133] BRASIL. *Decreto-lei nº 1.699*, de 24 de outubro de 1939. Provides for the Conselho Nacional de Águas e Energia Elétrica and its operation and other measures.

[134] BRASIL. *Decreto-lei nº 852*, de 11 de novembro de 1938 Maintains, with modifications, decree no. 24.643, of July 10, 1934 and other provisions: "Art. 4º Suspended the transfers of attributions made by the Union to the States of São Paulo and Minas Gerais by Decrees No. 272, of August 6, 1935, and No. 584, of January 14, 1936, as well as by agreements approved by Legislative Decrees No. 16, of August 1, 1936, and No. 35, of August 3, November 1936".

[135] Maria Letícia Corrêa, *Contribuição para uma história da regulamentação do setor de energia elétrica no Brasil,* op. cit., p. 256 e 271.

Even with the presence of the CNAEE, the absence of greater regulation favoured the most powerful parties. Above all, was the interest of the regime's bureaucratic elite in accelerating development and industrialization, above the needs of riverside people or other affected communities.[136] Since the Constituent Assembly of 1934, the aim of the Ministry of Agriculture was interaction between the State and foreign capital in which the Union is strengthened, to the detriment of the states, as actually happened.[137] Thus, even if the nationalist principles of *Código de Águas* and the Constitutions of 1934 and 1937 were guiding texts, the practice of CNAEE was to seek understanding with businessmen in the sector,[138] who alleged difficulties in expanding the electricity system in Brazil: to avoid shortages that would delay development, it was necessary to mitigate the "revolutionary nationalism" of the 1930s without falling back into the "regulatory vacuum" of the First Republic,[139] and thereby enable the expansion of the sector without the obstacles to the old contracts that prevented the modernization of the structure, review of tariffs, and extension existing contracts.[140]

In conclusion, it supports the idea of *Código de Águas* as one of the facets of the "authoritarian modernization" of Brazilian law during the Vargas Era.[141] Regulating the legal regime for water in that period context was "a critical and daring posture" in the current stage of modern law,[142] rethinking the role of the public and the private for economic development and national defence[143] from a legal perspective, with separation of the ownership of the energy potential of the land and making it susceptible to appropriation by state privileges.[144]

In an anachronistic way, the view of *Código de Águas*, of water for subsistence purposes, resembles what is now called commons. However, this

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136 Maria Elisabeth Duarte Silvestre, *Código de 1934*, op. cit., s.p.

137 Thiago Freitas Hansen, *Codificar e conservar,* op. cit., p. 128; Maria Letícia Corrêa, *Contribuição para uma história da regulamentação do setor de energia elétrica no Brasil*, op. cit., p. 257.

138 Maria Letícia Corrêa, *Contribuição para uma história da regulamentação do setor de energia elétrica no Brasil,* op. cit., p. 278.

139 Ibid., p. 282.

140 Ibid., p. 260.

141 PAIXÃO, Cristiano. Direito, política, autoritarismo e democracia no Brasil: da Revolução de 30 à promulgação da Constituição da República de 1988. *Araucaria*, a. 13, n. 26, p. 146-169, 2011.

142 Thiago Freitas Hansen, Codificar e conservar, op. cit., p. 29; Maria Letícia Corrêa, Contribuição para uma história da regulamentação do setor de energia elétrica no Brasil, op. cit., p. 287.

143 Maria Letícia Corrêa, *Contribuição para uma história da regulamentação do setor de energia elétrica no Brasil*, op. cit., p. 255.

144 Ibid., p. 288.

set of innovations had its limitations, as the institutional practice of the CNAEE mitigated many of the possible transformations of the sector, considering it was a moment of "proto-regulation".[145]

6. The "end of the Vargas era": the new regulation model and the permanence of *Código de Águas*

On February 13, 1995, the then President of the Republic Fernando Henrique Cardoso sanctioned Law No. 8.987, which provided for "the regime of concession and permission for the provision of public services provided for in art. 175 of the Federal Constitution". In his speech,[146] the president stated that "it is the moment to start separating the regulatory and supervisory functions, the task of the State, investment action and competition action". He pointed out that: "it is the end of the Vargas era and the introduction of reengineering in the government".

The norms of the Vargas era "which at the time corresponded to a great advance," according to the president, "now need to be reformulated so that the state can meet the needs of the contemporary world". This movement, which he called reengineering, would start with a proposal to reformulate the [hydro]electric sector.

In this conception, water goes from being for the common good to a "resource". This is the terminology used in Law no. 9.433, of January 8, 1997, when, with the "Política Nacional de Recursos Hídricos", he created the "Sistema Nacional de Gerenciamento de Recursos Hídricos", as a way of regulating item XIX of art. 21 of the Federal Constitution of 1988 (Art. 21. It is incumbent upon the Union: […] XIX — to institute a national system for managing water resources and define criteria for granting rights to use them).

Until this new regulation, *Código de Águas* — even with the changes made by laws and decrees, and related legislation on environment, irrigation and measures to combat drought — was the main milestone in the Brazilian legislation. The 1997 law did not repeal it, "but it amends some of its founding principles".[147]

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[145] Nírvia Ravena de Souza, *Trajetórias virtuosas na regulação da água no Brasil*, op. cit., p. 8 e 13.
[146] FHC diz que lei é 'fim da era Vargas'. *Folha de S.Paulo*, terça-feira, 14 fev. 1995.
[147] Maria Elisabeth Duarte Silvestre, *Código de 1934*, op. cit., s.p.

In the Code, water was addressed in two ways.[148] First, it is an essential element of life. Thus, it considers individual rights and establishes rules of conduct. This perspective came from the first project of Valadão, who understood codification as a regulation of property rights. Second, it is an indispensable stimulus to development. Mechanisms were created that stimulated the production and distribution of hydroelectric energy, on the one hand, but promoted the centralization of power, which resulted in state control of the activity. Both perspectives saw the water as a public good.[149]

Institutional "reengineering", vis-a-vis President FHC, marked the "tipping point" from a nationalist and centralized position towards access and use of water resources to a decentralized and participatory model. In addition, the current regulation, by understanding water as a resource, starts to see water as a public asset with economic value. This means imposing "a certain complexity to the regulatory requirements that, unlike the 1930s, are more complex and differentiated than envisaged in the implementation of the Code."[150] On the other hand, it is vague terminology by which regulation instruments, in practice, "legalize the private uses of water as they are covered by the water regulations".[151]

Meanwhile, the contemporary legal perspective has emphasized the relationship between water and fundamental human rights. In the Brazilian case, the 1988 Constitution established a "triple insertion of water": as a "natural resource", a "primary element of basic sanitation" or an "environmental factor".[152] The economic dimension is not neglected, but lives within this contradiction, in a play of light and shadow.[153] In fact, it appears subordinate to the logic of "concretizing the fundamental right of access to quality water" and even "of water rights" (water as a subject of rights).[154]

In historical-legal terms, we see parallels with the idea of articulation between theoretical knowledge and a given political project. Through legislative innovations, jurists sought to combat the problems. The reform of the legal universe meant seeking laws adapted to the new national context,

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148 Ibid.
149 Nírvia Ravena de Souza, *Trajetórias virtuosas na regulação da água no Brasil*, op. cit., p. 4.
150 Nírvia Ravena de Souza, *Trajetórias virtuosas na regulação da água no Brasil*, op. cit., p. 4.
151 Juan José Ordóñez García, *Do reconhecimento à efetividade do direito fundamental à água*, op. cit., p. 86.
152 DE CARLI, Ana Alice. As dimensões dos direitos das águas. RDA — *Revista de Direito Administrativo*, Rio de Janeiro, v. 276, p. 102, set./dez. 2017.
153 José Juan Ordóñez García, *Do reconhecimento à efetividade do direito fundamental à água*, op. cit., p. 9-14.
154 Ana Alice De Carli, *As dimensões dos direitos das águas*, op. cit., p. 103.

of authoritarian modernization, and in efforts at national interpretation of a project with lasting effects.[155]

Not by chance, there was a counter-effort in the 1990s to deconstruct this model and insert the new language of "water resources". But even that did not eliminate the old construction: the *Código de Águas*, although much modified — for all the changes, the legal framework for basic sanitation[156] — still stands.

7. Final considerations

The work systematized the legislative sources and historiography on the construction of the 1934 *Código de Águas*, detailing a set of tensions between models of State and law. In the first case, the federative model was in check, representing a break with the consolidated organization of the First Republic. Likewise, we see a distinction between a classical liberal state model and a bureaucratic state with authoritarian tendencies. As seen, the CNAEE was an example of how the centralizing and bureaucratic models eventually prevailed.

In the second case, a model that relegated private law, through the accession regime, was disputed, with the model that migrated the problem to administrative law, according to the federal public domain model. *Código de Águas*, as Valadão pointed out at the beginning of the century, has roots in various branches of law. Concerning a concrete problem — access and use of the waters —, today we have so-called microsystems.[157]

Furthermore, the interface of legal and political problems is highlighted with regard to exploiting the energy potential of waterfalls in the constitutional text. Here it becomes clear how these questions are interdependent, and how the result constructed by the Constituent Assembly delimited possibilities for the consolidation of the model that emerged and was implemented with *Código de Águas*. The result was a dynamic text, that even with the change from an entrepreneurial model to regulation of the State, remains a fundamental

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[155] Mariana de Moraes Silveira, *Direito, ciência do social*, op. cit., p. 453-454.

[156] BRASIL. *Lei nº 14.026*, de 15 de julho de 2020. Updates the legal framework for basic sanitation.

[157] CERVO, Fernando Antonio Sacchetim. Codificação, descodificação e recodificação — do monossistema ao polissistema jurídico. *Revista Magister de Direito Civil e Processual Civil*, n. 58, p. 80-86, jan./fev. 2014.

reference that sparked the national imagination, ensuring the prominence of the issue in the current constitutional regime.

Regarding the historiographical problem, in general terms, the proposal presented here is in line with those who understand *Código de Águas* as one of the steps of the so-called "authoritarian modernization" of the Vargas Era. Although the work of Valadão began in the First Republic, the interventions of Távora and his own additions advanced construction of the codification, away from the parliamentary discussion towards the legal technique, as with the debate already held on penal reform, a Forest Code and the formation of the legislative committee.

In the methodological field, it is worth highlighting the need to limit the objective in a very localized way, not broaching questions such as the content of legislation and its possible authoritarian influences. The breadth of sources and literature cannot be ignored. In this sense, we considered the main legislative sources — the work of the Legislative Subcommittee, the Ministry of Agriculture and the Annals of the National Constituent Assembly — to fully realize the analytical context.

The study aimed to open doors for further research, considering themes that remained latent without the possibility of more precise analysis. The legal ramifications deserve more in-depth study, through judicial monographs[158] or doctrines referring to agrarian and economic law.

The Water Code represented a milestone in legal regulation of public assets and a paradigm shift from the classical liberal to interventionist state model — one able to adapt to both the regulatory paradigm and the constitutional democratic model.

References

ABREU, Alzira Alves de. Conselho Nacional de Águas e Energia Elétrica [verbete].

ABREU, Alzira Alves de et al. *Dicionário histórico-biográfico brasileiro pós 1930*. 3. ed. Rio de Janeiro: FGV, 2010.

[158] For example, NUNES, Antônio de Pádua. *Código de águas*: Decreto n. 24.643, de 10-7-1934: anotações em face da doutrina, da jurisprudência e das leis posteriores. São Paulo: *Revista dos Tribunais*, 1962; HOMBEECK JÚNIOR, Charles van. *Preservação e uso dos recursos de água e solo: aspectos legais que regem a política brasileira para o setor*. Brasília, DF: Minter, 1977.

BERCOVICI, Gilberto. *Direito econômico do petróleo e dos recursos minerais*. São Paulo: Quartier Latin, 2011.

BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1935. v. I [1933].

BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1935. v. II [1933].

BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1935. v. VII [1934].

BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1936. v. X [1934].

BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1936. v. XIII [1934].

BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1936. v. XIV [1934].

BRASIL. *Anais da Assembleia Nacional Constituinte*. V. XVII [1934]. Rio de Janeiro: Imprensa Nacional, 1936.

BRASIL. *Anais da Assembleia Nacional Constituinte.* Rio de Janeiro: Imprensa Nacional, 1937. v. XIX [1934].

BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1936. v. XV [1934].

BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1936. v. XVI [1934].

BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1937. v. XX [1934].

BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1937. v. XXI [1934].

BRASIL. *Anais da Assembleia Nacional Constituinte*. Rio de Janeiro: Imprensa Nacional, 1937. v. XXII [1934].

BRASIL. *Código de águas*. Diário Oficial da União, Rio de Janeiro, 20 jul. 1934. Seção 1, p. 1.

BRASIL. *Constituição da República dos Estados Unidos do Brasil* (de 24 de fevereiro de 1891).

BRASIL. *Constituição da República dos Estados Unidos do Brasil* (de 16 de julho de 1934).

BRASIL. *Constituição dos Estados Unidos do Brasil*, de 10 de novembro de 1937.

BRASIL. *Constituição Política do Império do Brasil*, elaborada por um Conselho de Estado e outorgada pelo imperador d. Pedro I, em 25.3.1824.

BRASIL. *Decreto no 19.398*, de 11 de novembro de 1930. Institui o Governo Provisório da República dos Estados Unidos do Brasil, e dá outras providências.

BRASIL. *Decreto no 19.684*, de 10 de fevereiro de 1931. Promulga os dispositivos disciplinares da Comissão Legislativa, com sede nesta Capital.

BRASIL. *Decreto no 22.621*, de 5 de abril de 1933. Dispõe sobre a convocação da Assembleia Nacional Constituinte; aprova seu Regimento Interno; prefixa o número de deputados à mesma e dá outras providências.

BRASIL. *Decreto no 24.643*, de 10 de julho de 1934. Decreta o Código de Águas.

BRASIL. *Decreto-Lei no 852*, de 11 de novembro de 1938. Mantém, com modificações, o decreto n. 24.643, de 10 de julho de 1934 e dá outras providências.

BRASIL. *Decreto-Lei no 1.285*, de 18 de maio de 1939. Cria o Conselho Nacional de Águas e Energia, define suas atribuições e dá outras providências.

BRASIL. *Decreto-Lei no 1.699*, de 24 de outubro de 1939. Dispõe sobre o Conselho Nacional de Águas e Energia Elétrica e seu funcionamento e dá outras providências.

BRASIL. Exposição de motivos. Diário Oficial da União, Rio de Janeiro, 24 nov. 1907. Seção 1, p. 1.

BRASIL. *Exposição de motivos*. Diário Oficial da União, Rio de Janeiro, 23 maio 1933. p. 10.316.

BRASIL. *Lei Constitucional no 6*, de 13 de maio de 1942. Emenda o § 1o do art. 143 da Constituição.

BRASIL. *Lei no 16* de 12 de agosto de 1834. Faz algumas alterações e adições à Constituição Política do Império, nos termos da Lei de 12 de outubro de 1832.

BRASIL. *Lei no 105*, de 12 de maio de 1840. Interpreta alguns artigos da Reforma Constitucional.

BRASIL. *Lei no 1.617*, de 30 de dezembro de 1906. Fixa a despesa geral da República dos Estados Unidos do Brasil para o exercício de 1907, e dá outras providências.

BRASIL. *Lei no 3.071*, de 1o de janeiro de 1916. Código Civil dos Estados Unidos do Brasil.

BRASIL. *Lei no 3.782*, de 22 de julho de 1960. Cria os Ministérios da Indústria edo Comércio e das Minas e Energia, e dá outras providências.

BRASIL. *Lei no 3.890-A*, de 25 de abril de 1961. Autoriza a União a constituir a empresa Centrais Elétricas Brasileiras S. A. — ELETROBRAS, e dá outras providências.

BRASIL. *Lei no 14.026*, de 15 de julho de 2020. Atualiza o marco legal do saneamento básico [...].

BRASIL. Supremo Tribunal Federal. *Agravo de Instrumento 7880*. Relator(a): min. José Linhares. Julgamento: 1o/6/1938.

CARLES, Marjolaine. Águas de domínio público (Brasil colonial): o caso de Vila Rica, Minas Gerais, 1722-1806. *Varia Historia*, Belo Horizonte, v. 32, n. 58, p. 79-100, jan./abr. 2016.

CERVO, Fernando Antonio Sacchetim. Codificação, descodificação e recodificação — do monossistema ao polissistema jurídico. *Revista Magister de Direito Civil e Processual Civil*, n. 58, p. 80-86, jan./fev. 2014.

CHELMICKI, José Carlos Conrado de. *Memória sobre o Aqueduto Geral de Lisboa: feita por ordem do Ministério das Obras Públicas em portaria de 15 de fevereiro de 1856*. Lisboa: Imprensa Nacional, 1857.

CORRÊA, Maria Letícia. Contribuição para uma história da regulamentação do setor de energia elétrica no Brasil: o Código de Águas de 1934 e o Conselho Nacional de Águas e Energia Elétrica. *Política & Sociedade*, Florianópolis, v. 1, n. 6, p. 255-291, 2005.

DE CARLI, Ana Alice. As dimensões dos direitos das águas. RDA — *Revista de Direito Administrativo*, Rio de Janeiro, v. 276, p 77 -107, set./dez. 2017.

DEL PICCHIA, Lucia Barbosa. *Estado, democracia e direitos na crise do constitucionalismo liberal: uma comparação entre o pensamento jurídico francês e o brasileiro*. Tese (doutorado em direito econômico e financeiro) — Faculdade de Direito, Universidade São Paulo, São Paulo, 2012.

ESPÓSITO NETO, Tomaz. Uma análise histórico-jurídica do Código de Águas (1934) e o início da presença do Estado no setor elétrico brasileiro no primeiro. Governo Vargas. *Revista Eletrônica História em Reflexão*, Dourados, v. 9, n. 17, jan./jun. 2015.

FHC diz que lei é 'fim da era Vargas'. *Folha de S.Paulo*, terça-feira, 14 fev. 1995.

FIORAVANTI, Maurizio. Stato e costituzione. In: FIORAVANTI, Maurizio (A cura di). *Lo stato moderno in Europa: istituzioni e diritto.* 10. ed. Roma; Bari: Laterza, 2010. p. 3-36.

FLORES, Alfredo de Jesus Dal Molin; PETERSEN, Raphael de Barros. Os sistemas administrativos, do império à primeira república: os modelos de controle de atos administrativos no Brasil independente. *Revista Brasileira de História do Direito*, Porto Alegre, v. 4, n. 2, p. 75-92, 2018.

GROSSI, Paolo. Códigos: algumas conclusões entre um milênio e outro. In: GROSSI, Paolo. *Mitologias jurídicas da modernidade*. Tradução de Arno Dal Ri Júnior. 2. ed. Florianópolis: Boiteux, 2007.

HANSEN, Thiago Freitas. *Codificar e conservar: ciência e pensamento jurídico na formação do Código Florestal Brasileiro de 1934*. Tese (doutorado em direito) — Setor de Ciências Jurídicas, Universidade Federal do Paraná, Curitiba, 2018.

HANSEN, Thiago Freitas. *Imaginários da modernização do direito na Era Vargas: integração, marcha para o oeste e política indigenista* (1930-1945). Dissertação (mestrado) — Setor de Ciências Jurídicas, Programa de Pós-Graduação em Direito, Universidade Federal do Paraná, Curitiba, 2014.

HESPANHA, António Manuel. *As vésperas do Leviathan: instituições e poder político — Portugal, séc. XVII.* Coimbra: Almedina, 1994.

HOMBEECK JÚNIOR, Charles van. *Preservação e uso dos recursos de água e solo: aspectos legais que regem a política brasileira para o setor.* Brasília, DF: Minter, 1977.

LYNCH, Christian Edward Cyril. O Poder Moderador na Constituição de 1824 e no anteprojeto Borges de Medeiros de 1933: um estudo de direito comparado. *Revista de Informação Legislativa*, Brasília, a. 47, n. 188, out./dez. 2010.

MACEDO, Danilo Matoso. Urbanização em territórios luso-brasileiros: a urbanização das "Ordenações do Reino". *Paranoá*, Brasília, n. 13, p. 17-26, 2014.

MEDEIROS, Borges de. *O Poder Moderador na República presidencial*. Recife: Edição da S.A. Diário de Pernambuco, 1933.

NUNES, Antônio de Pádua. Código de águas: Decreto n. 24.643, de 10-7-1934: anotações em face da doutrina, da jurisprudência e das leis posteriores. São Paulo: *Revista dos Tribunais*, 1962.

NUNES, Diego. Processo legislativo para além do Parlamento em Estados autoritários: uma análise comparada entre os Códigos Penais Italiano de 1930 e Brasileiro de 1940. *Sequência*, Florianópolis, n. 74, p. 153-180, dez. 2016.

ORDÓÑEZ GARCÍA, Juan José. *Do reconhecimento à efetividade do direito fundamental à água: diálogos entre Nicarágua e Brasil*. Dissertação (mestrado em Direito) — Universidade Federal de Uberlândia, Uberlândia, 2016.

PAIXÃO, Cristiano. Direito, política, autoritarismo e democracia no Brasil: da Revolução de 30 à promulgação da Constituição da República de 1988. *Araucaria*, a. 13, n. 26, p. 146-169, 2011.

PESSOA, Epitácio. *Terrenos de Marinha: ação de reivindicação movida pelos Estados da Bahia e do Espírito Santo contra a União Federal*: razões finais oferecidas em defesa dos direitos da União. Rio de Janeiro: Imprensa Nacional, 1904.

PETIT, Carlos. El Código de tránsito no es un código: a propósito de la sentencia C-362/1996, 3 de septiembre, de la Corte Constitucional de Colombia. In *Revista para el Análisis del Derecho,* Barcelona, n. 2, abr. 2014.

PORTUGAL. *Ordenações filipinas*.

SALGADO, Gisele M. Discussões legislativas do Código Civil de 1916: uma revisão historiográfica. *Âmbito Jurídico*, v. 96, p. 1-19, 2012.

SANTANA, Ana Carolina da Silva. *Códigos de posturas municipais: reflexo de um discurso e de suas problemáticas*. In: XXVII SIMPÓSIO NACIONAL DE HISTÓRIA, XXVII, 2013, Natal. Anais... Natal: Anpuh, 2013.

SEELAENDER, Airton Cerqueira Leite. A "polícia" e as funções do estado — notas sobre a "polícia" do antigo regime. *Revista da Faculdade de Direito* — UFPR, Curitiba, n. 49, p. 73-87, 2009.

SILVEIRA, Mariana de Moraes. Direito, ciência do social: o lugar dos juristas nos debates do Brasil dos anos 1930 e 1940. *Estudos Históricos*, Rio de Janeiro, v. 29, n. 58, p. 441-460, maio/ago. 2016.

SILVEIRA, Mariana de Moraes. *Revistas em tempos de reformas: pensamento Jurídico, legislação e política nas páginas dos periódicos de direito* (1936-1943). Dissertação (mestrado em história) — Universidade Federal de Minas Gerais, Belo Horizonte, 2013.

SILVEIRA, Mariana de Moraes. Técnicos da legalidade: juristas e escrita das leis (Argentina e Brasil, primeira metade do século XX). *Estudios Sociales Contemporáneos*, v. 17, p. 86-102, 2017.

SILVESTRE, Maria Elisabeth Duarte. Código de 1934: água para o Brasil industrial. *Revista Geo-Paisagem*, a. 7, n. 13, jan./jun. 2008.

SOUZA, Nírvia Ravena de. Trajetórias virtuosas na regulação da água no Brasil: os pressupostos inovadores do código das águas. *Papers do Naea*, Belém, n. 220, dez. 2008.

VALADÃO, Alfredo. *Bases para o código das águas da República*. Rio de Janeiro: Imprensa Nacional, 1907.

VALADÃO, Alfredo. Direito das águas. São Paulo: *Revista dos Tribunais*, 1931.

VALADÃO, Alfredo. *Dos rios públicos e particulares*. Belo Horizonte: s.n., 1904.

VARGAS, Getúlio. *A nova política do Brasil*. Rio de Janeiro: José Olympio, s.d. v. I.

VENÂNCIO FILHO, Alberto. Código de Águas [verbete]. In: ABREU, Alzira Alves de et al. *Dicionário histórico-biográfico brasileiro* pós 1930. 3. ed. Rio de Janeiro: FGV, 2010.

VICENTE, Marcos Felipe. *O Código de Posturas como instrumento de controle social: reflexões sobre o Código da Vila de Guarany* (1898). In: SEMANA DE HISTÓRIA DA FECLESC, XII, 2016 Quixadá/CE. Anais... Quixadá, CE: UECE, 2016.