# *THE GOVERNMENT AND THE OPPOSITION*: THE DISPUTE FOR THE ADDITIONAL ACT IN IMPERIAL BRAZIL[1]

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**Abstract:** Published in the newspaper of the provincial government of Paraná, the series of articles *The government and the opposition* was written in defense of the president of the province in the case of the judicial district of S. José dos Pinhais. Guided by the Ginzburg microhistorical approach, this research aimed to discover, based on four particular texts, whether it was possible to grasp general issues of Imperial Brazil. Reconstructing the public discussion to which these anonymous articles belonged led to realize that they were an episode of a broader novel on the interpretation of the Additional Act of 1834, the only constitutional reform of the Imperial Charter of 1824. Said Act represented a (federative?) pact between the crown and the provincial oligarchies. Although narrow and biased, the window opened by the four editorials allows to glimpse a lush interpretive garden: divided into party doctrines, with individual nuances, incoherencies and, most importantly, a constitutional custom. The imperial form of state, then, was designed according to a historically settled game of legal interpretation.

**Keywords:** Interpretation of the Additional Act, Form of state, Imperial Brazil, Constitutional Monarchy, Microhistory.

## I. PRESENTATION

The form of state in Imperial Brazil deserves attention in the field of legal history, especially to undo analytic biases, inherited from the passage from the monarchy to the republic. In Brazilian constitutional law, for example, a vision focused on the shine of the crown predominates. According to such understanding, the emperor would rule in an authoritarian and absolute way, supported by an institutional model of extreme centralization[2]. This

[1] Translation by Marja Mangili Laurindo, PhD candidate in the Postgraduate Program in Law at the Federal University of Santa Catarina (UFSC), and by the author himself. Technical review by Márcio Eduardo Zuba, proofreader at the Federal University of Paraná (UFPR).

[2] E. g. Ingo Wolfgang Sarlet, *Curso de direito constitucional*, São Paulo, Saraiva, 2015, pp. 228-229; José Afonso da Silva, *Curso de direito constitucional positivo*, São Paulo, Malheiros, 2010, pp. 76-77.

interpretation, that bets on an "especially powerful emperor"[3], even transpires works of quality and importance in Latin American constitutional history, but it actually echoes the discourse of the victorious oligarchies of the First Republic.

Albeit very few would deny the considerable influence of the center during the period, it seems reasonable to doubt the supposed absolute centralization in a territory of vast dimensions and precarious means of communication. As a supporter of the central executive branch testified, "this is the great problem of our administrations. They have the great luxury of personnel. They have huge heads, but they have almost no arms and legs". And he added, "our administrative organization lacks means and action. It is a huge head in a rickety body"[4]. Even if it has to be analyzed with caution, the testimony indicates that the imperial state did not have an organized apparatus, along the lines of rational domination, that would allow the central executive branch to impose itself on the regional oligarchies, as the centralists of the Conservative Party would like to.

Moreover, those oligarchies found institutional spaces to manifest some official autonomy from the beginning. As Continentino has shown[5], even the original design of the 1824 Charter, art. 71, recognized "the right of every Citizen to intervene in the affairs of his–Province", and ensured it through provincial general councils. Ten years after the Charter, these councils were replaced by the provincial assemblies. The Additional Act of 1834 instituted them as a considerable improvement in regional autonomy, excessively limited by the model of general councils. Discussing the constitutional reform, senator Alencar argued: "Brazil does not want to be reduced to independent states with sovereigns, or federated presidents; what it wants is to lighten the yoke of provincial dependency", in order to grant to the provinces "the prerogative to deal with their own interests". And he continued, "this is the reasonable desire of the men of Brazil and that is what must be engraved in the hearts of Brazilians, especially those born in the provinces"[6]. Having opposed "fiercely the constitutional reforms"[7], even the Marquis of Caravelas pondered about the Charter, "one of the defects that are pointed out in it is that of the provincial councils; and I also have it as such, and I see the need to reform the articles related to it"[8].

A unique formal reform of the Charter during more than six decades of monarchy, the Additional Act contributed definitively to regional autonomy by providing real legislatures to the provinces. Even if some might protest that the Interpretation Law of 1840 returned to the *status quo ante* in the matter of provincial autonomy, the fact is that the provincial assemblies remained

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[3] Roberto Gargarella, *La sala de máquinas de la constitución: dos siglos de constitucionalismo en América Latina (1810-2010)*, Buenos Aires, Katz Editores, 2014, p. 45.

[4] Visconde do Uruguai, *Ensaio sobre direito administrativo*, São Paulo, Ed. 34, 2002, pp. 204-205.

[5] Marcelo Casseb Continentino, *História do controle de constitucionalidade das leis no Brasil: percursos do pensamento constitucional no século XIX (1824-1891)*, São Paulo, Almedina, 2015.

[6] *Anais do senado do Império*, session of May 29th, 1832, p. 165.

[7] Christian Edward Cyril Lynch, *Monarquia sem despotismo de liberdade sem anarquia: o pensamento político do Marquês de Caravelas*, Belo Horizonte, Editora UFMG, 2014.

[8] *Anais do senado do Império*, session of June 8th, 1832, p. 288.

untouched, and with a considerable list of legislative prerogatives: to create taxes and public offices, to promote public works and education, to prepare and vote the provincial budget, to deliberate on the civil, judicial, and ecclesiastical division of the province. Except for the abrogation of the provincial instances of the judicial branch, none of these attributions were altered by the Interpretation Law In fact, it was considered insufficient by its creator themselves, the centralists of the Conservative Party, because it did not "remove in detail how many doubts could be raised"[9], that is, doubts about the interpretation of the Additional Act.

An exclusive bet on the crown, then, is not convincing: apart from their explicit prerogatives, the provincial legislatures could benefit from the open texture of the Additional Act. And so could the central government as well. Assuming that legal norms are not the texts themselves, but the result of an interpretation[10] linked to historical values and practices, the prerogatives of the center and the provinces depended on the meanings then ascribed to the constitutional texts. Therefore, a deeper understanding of the matter requires the analysis not only of the sources discourse, but mostly of the interpreters' discourse[11]. This paper is intended to deal with the discovery of such a broad field for legal history.

Containing the legal reasoning of a particular interpreter, *The government and the opposition* consisted of propaganda texts written in defense of the president of Paraná and against the provincial legislature. Four anonymous editorial columns expressed the dispute between regional family oligarchies, as well as a general issue of Imperial Brazil: the dispute for the Additional Act. At first, however, the existence of these texts was ignored, let alone the interpretive novel. They have been gathered drawing on public discussion sources, on published works and other documents to which the provincial clues led. Everything began with the reading of the main periodicals of the provincial political press, between 1888 and 1889: *Gazeta Paranaense* (Conservative Party), *Dezenove de Dezembro* (Liberal Party), *Sete de Março* (Conservative Party) and *A Republica* (Republican Party)[12].

Further investigation showed that the regional dispute around which *The government and the opposition* arose has not been limited to the provincial sphere. On the contrary, the case of the judicial district of S. José dos Pinhais has been debated in a complex framework of public discussion, in a back and forth movement involving the first instance (provincial press), the second instance (Rio de Janeiro press), and the Supreme Court (Parliament) of public opinion: "a

[9] Visconde do Uruguai, *Estudos práticos sobre a administração das províncias no Brasil*, Rio de Janeiro, B. L. Garnier, v. 1, 1865, p. XXVI.

[10] Riccardo Guastini, *Interpretar e argumentar*, Belo Horizonte, Editora D'Plácido, 2020, p. 13-72.

[11] Riccardo Guastini, *Das fontes às normas*, São Paulo, Quartier Latin, 2005, p. 23-43.

[12] Written by individuals inserted in broad networks of party dependency, the newspapers from Paraná contain both particular and general issues, among other reasons because of the circularity of public positions through which the imperial political elite was trained (José Murilo de Carvalho, *A construção da ordem: a elite política imperial. Teatro de sombras: a política imperial*, Rio de Janeiro, Civilização Brasileira, 2012, p. 145-168).

moral responsibility tribunal"[13] to supervise the constituted authorities. From regional press to national parliament, public discussion used to circulate up and down dialogical grounds where multiple voices could and still can be heard. This work about *The government and the opposition* consisted of recomposing a mosaic whose fragments were scattered in different traces, each representing a tonality of the interpretive spectrum. The press articles cannot be understood as a mere source of information about plain facts. They belong to a broader, controversial context of public discussion.

According to Carlo Ginzburg's approach[14], the methodological challenge is to discover the general issues implicit in particular episodes that some might consider marginal and irrelevant. Such approach is well suited to the provincial press of the analyzed period since microhistory grasps the *minor sources* through a different prism: in addition to particular exceptions, they also carry general issues. According to the author, "the *hors-texte*, what is outside the text, is also inside it, shelters itself in its folds: it is necessary to discover it and make it speak" (GINZBURG, 2002, p. 42). Looking forward to reveal the implied meaning of *The government and the opposition*, the investigation worked on a path to reconnect the particular episode to the general context, so that a major constitutional issue of Imperial Brazil was revealed.. In the folds of public discussion, the dispute for the Additional Act was implied. The historical novel about the tension between a unifying center and provincial autonomies found, in the anonymous articles, another of its many chapters: a narrow and skewed window, from which, however, it is possible to glimpse a lush interpretive garden.

First, the dominant strength relations in the province of Paraná are presented, as well as the quarrel between them in the case of the judicial district of S. José dos Pinhais, in order to frame the regional context in which *The government and the opposition* arises. Then, the four anonymous articles are analyzed in the light of the public discussion to which they belong, as to portray the many interpretive shades, as well as the back and forth movement of the public discussion: from the province to the center, from the center to the province. Finally,the path from the particular episode to the general question is set forth: the conflict of provincial interests was enacted within the possibilities of historically settled interpreters' discourse, which comprised strong divergences between the interpretive guidelines of the Conservative and the Liberal parties. Supporters of the center, the Conservatives ascribed to the Additional Act a restrictive sense of the provincial assemblies prerogatives, and, at the same time, an expansive sense to the presidents of province attributions, since they were freely appointed by the central executive branch. Friends of the provincial franchises, the liberals interpreted restrictively the powers of such delegates of the central government, and expansively those of the provincial legislatures elected by the provinces. There were different interpretive nuances among individuals of the same party, in addition to incoherencies with party interpretive guidelines because of a constitutional

[13] José Antônio Pimenta Bueno, *Direito publico brasileiro e análise da Constituição do Império*, Rio de Janeiro, J. Villeneuve, 1857, p. 338.

[14] Carlo Ginzburg, *Mitos, emblemas, sinais: morfologia e história*, São Paulo, Cia. das Letras, 1989.

custom: against the constitutional text, the central executive branch interpreted the law and the constitution.

## II. REGIONAL OLIGARCHIES IN DISPUTE

During the period under investigation, the political scenario in the province of Paraná was dominated by family oligarchies built on marriage, subservience, and exchange of favors[15]. A more complete picture of the provincial strength relations can be found in Alves[16] work. For the present study, only the predominance of two clans at the end of the Empire is of interest – one organized around the Conservative Party, and the other around the Liberal Party of Paraná.

Constituted by the "marriage of coastal families with inland families from the general camps", the "Oliveira e Sá and Alves de Araújo clan"[17] was headed by Jesuíno Marcondes de Oliveira e Sá[18]. He made the Liberal Party the instrument of his interests, and, in the last decade of the Empire, he enjoyed of a comfortable majority in the legislative branch of Paraná, that is, in the provincial assembly. As a representative at the public opinion tribunal, Jesuíno Marcondes counted on the *Dezenove de Dezembro*, a Liberal Party organ.

Resulting from the alliance between the Correia and Guimarães families, this one represented by the Viscount of Nácar, the Correia-Nácar clan set up the Conservative Party to assert its interests. The clan dominated the executive branch of Paraná during conservative situations in the general government, especially through the influence of senator Correia[19] in high imperial circles. This was possible because the presidents of province were not elected, but freely appointed by the central executive, which imposed on the provincial executive all

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[15] Judá Leão Lobo and Otávio Oliveira de Souza. A liberdade de expressão entre monarquia e república: uma história de igualdade e hierarquia na Curitiba de 1889, *Revista de Estudos Empíricos em Direito*, v. 5, n. 3, pp. 68-92, 2018.

[16] Alessandro Cavassin Alves, *A província do Paraná. A classe política. A parentela no governo*, doctoral thesis, Programa de Pós-Graduação em Sociologia – Setor de Ciências Humanas, Letras e Artes da Universidade Federal do Paraná, Curitiba, 2014.

[17] Alessandro Cavassin Alves, *A província do Paraná...*, *op. cit.*, p. 92.

[18] Born in Palmeira on June 1st, 1827, "he was the son of the Ensign de Militias José Caetano de Oliveira, later Baron of Tibagi, and his wife Querubina Rosa Marcondes de Sá, Baroness and later Viscountess of Tibagi". He graduated from the São Paulo Law School, served as a representative in several provincial and general legislatures, held the presidency of the province for more than once, was minister of agriculture and "supreme head of the liberal party in Paraná" (Francisco Negrão, *Genealogia paranaense*, v. III, Curitiba, Impressora Paranaense, 1928, pp. 74-76).

[19] Born in 1831 in the city of Paranaguá, the senator and state councilor Manoel Francisco Correia was the son of the provincial deputy Manoel Francisco Correia Júnior and grandson of the lieutenant-colonel Manoel Francisco Correia, "*the old one*". He was the brother of Ildefonso Pereira Correia, the Baron of Serro Azul. He never had much traffic in Paraná, having left his family's area early to study and pursue the career of an Imperial Officer. He graduated from the São Paulo Law School in 1854, having held several prominent positions in the Empire and the Republic. He returned to his province only to be elected senator in 1875, replacing the Baron of Antonina. During the constitutional monarchy, he was a character of enormous influence in Rio de Janeiro, having founded and participated in several humanitarian and scientific societies, as well as reached the most prestigious positions among the high imperial civil service (Francisco Negrão, *Genealogia paranaense*, v. III, Curitiba, Impressora Paranaense, 1928, pp. 277-279).

over the country its party tint. The clan representative for public opinion was the *Gazeta Paranaense*, a conservative party organ.

In 1888, the electoral dispute for the provincial legislature resulted in a unanimously liberal assembly. The provincial president, however, had been appointed by a ministry occupied by the Conservative Party. As situation and opposition, the provincial executive and legislative branches tended to come into conflict under the constitutional design for the provinces, which linked them to different constitutive authorities. Here is the scenario of a symptomatic dispute for the meaning of the Additional Act of 1834, which attributed a legal guise to personal and family interests: the case of the judicial district of São José dos Pinhais.

### 2.1. The case of the judicial district of S. José dos Pinhais

During the Brazilian Second Empire, there was an alternation between parties in the government as well as political dispute, both partly due to the "interference of the Moderating Power" ensured by the Charter[20]. The prerogative of the crown favored "the representation of the minority, insofar as it made temporary the defeat of one of the parties", enabling "the existence of bipartisanship"[21]. With the fall of the situation and the rise of opposition to the ministry, new heads of provincial executives were appointed, and the supporters of the old government were replaced by those of the new one. The presidents soon promoted a "massive overthrow" of the provincial civil service, a "disgusting task"[22] in the eyes of those who lost jobs and income because they did not belong to the ruling party. Thus, the government's influence in the elections was guaranteed, sagged under the weight of a public service aligned with the central executive's political tendency.

On August 20th, 1885, the 1878 liberal situation was finished. The Conservative Party took over the government with the Baron of Cotegipe as prime minister. In the province of Paraná, Joaquim de Almeida Faria Sobrinho assumed the provincial executive on an interim basis. Except for the short period in which president Taunay administered Paraná, Faria Sobrinho headed the administration until December 1887. He was in charge of promoting a never seen intense overthrow of the liberal civil service, as the opposition argued and Alves[23] confirms. Leaving the provincial executive, Sobrinho drafted a report in which it appears that, out of forty-two postal agents, only three were appointed before August 20th, 1885. Around 7% of the liberal nominations remained, while the chance of officials was approximately 93%[24].

With some reason, the liberal opposition tended "to believe that Faria lost his mind for the dazzle of power and that in his madness he allowed his looting friends to lift their wombs out of misery", as a provincial deputy censored. "A vile

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[20] Political Constitution of the Empire of Brazil: "Art. 101. The Emperor exercises the Moderating Power: [...] VI. Appointing and freely dismissing the Ministers of State [...]".

[21] José Murilo de Carvalho, *A construção da ordem...*, *op. cit.*, p. 406.

[22] *Sete de Março*, Curitiba, July 6th, 1889, p. 3, and June 15th, 1889, p. 4, respectively.

[23] Alessandro Cavassin Alves, *A província do Paraná...*, *op. cit.*, pp. 272-273.

[24] *Gazeta Paranaense*, Curitiba, April 14th, 1888, p. 1.

instrument of half a dozen of resentful and ominous associates", Faria Sobrinho would have been "the greatest propellant of our ruins, our backwardness and distortion of clean characters"[25]. In the provincial assembly, he was accused of making of "the public coffers a cash box to form a party that wanted to rise by corruption and crime"[26]. After the nomination of the ex-president to a position of magistrate[27], a deputy considered it "immoral to send to the province of Paraná - and invested with the high function of judge of law- a man who, full of hatred and resentment, conspired so much against the progress of his homeland"[28].

In a unanimously liberal legislative a bill was proposed on extinguishing "the judicial district of S. José dos Pinhais" and annexing "its territory to the judicial district of the capital", under the pretext of the former being "absolutely unnecessary", considering the "little forensic movement" and the "short distance from the capital"[29]. The result would be the suspension of the magistrate occupying the judicial district: a retaliation against Faria Sobrinho for his acts in the presidency. Prescribed by art. 11, § 1º, of the Additional Act[30], the legislative procedure went rapidly, without any protest from the provincial deputies.

Once the project was offered, the proposer required a "consultation with the house in order to see if it consents to include the project nº 21 in the order of the day, without prejudice to its printing". To which the president of the assembly consented: "the project must be published in the house newspaper and [...] given to the order of the day"[31]. Proposed on August 14th, on August 20th it was approved "without debate" in the 1st discussion[32], on August 21st in the 2nd[33], and on August 22nd in the 3rd. The "draft of the project" was presented on the same day, and its immediate discussion was required. "Once the application is approved and the wording is discussed, the project was approved without debate and sent to be sanctioned"[34].

"Was approved today the decree that extinguishes the judicial district of S. José dos Pinhais, annexing it to the capital, and which determines that the functions of general director of public education will be exercised by a professor of the institute appointed by the president", the *Dezenove de Dezembro* announced triumphantly[35]. As prescribed by the Additional Act[36], project nº 21

[25] *Dezenove de Dezembro*, Curitiba, August 21st, 1888, p. 1.

[26] *Dezenove de Dezembro*, Curitiba, August 23rd, 1888, p. 1.

[27] *Gazeta Paranaense*, Curitiba, July 3rd, 1888, p. 2.

[28] *Dezenove de Dezembro*, Curitiba, August 23rd, 1888, p. 1.

[29] *Dezenove de Dezembro*, Curitiba, September 4th, 1888, p. 1.

[30] Additional Act of 1834: "Art. 11. The Provincial Legislative Assemblies are also responsible for: § 1º Organizing the Internal Regulations on the following bases: 1st No Bill of Law or Resolution may enter into discussion without having been given to the agenda, at least twenty-four hours before; 2nd Each Bill of Law, or Resolution, will go through at least three discussions; 3rd From one to the other discussion there can be no less than twenty four hours".

[31] *Dezenove de Dezembro*, Curitiba, August 18th, 1888, p. 2.

[32] *Dezenove de Dezembro*, Curitiba, August 21st, 1888, p. 2.

[33] *Dezenove de Dezembro*, Curitiba, August 22nd, 1888, p. 2.

[34] *Dezenove de Dezembro*, Curitiba, August 23rd, 1888, p. 2.

[35] *Dezenove de Dezembro*, Curitiba, August 22nd, 1888, p. 2.

was sent to the conservative president Balbino da Cunha. Having seen in it "sacrifices of political friends"[37], the president denied the sanction based on the same document[38]: "yesterday returned to the provincial legislative assembly the project that extinguishes the judicial district of S. José dos Pinhais"[39], accompanied by the mandatory reasons for non-sanction.

"Created and maintained with the agreement of both political parties, 11 years ago and comprising a large territorial area", reasoned the president, "the judicial district of S. José dos Pinhais counts with more than 16,000 inhabitants, about 240 jurors, and 200 voters, approximately, 4 parishes and 1 district of peace". Those were at the time considerable numbers. To this, "7 colonies" more should be added, and with "population of different nationalities, not always respectful to public order", reason why they would require "often prompt and effective justice action". For such reasons, he concluded, "the extinction of the judicial district in no way complies with the interests of the province and the locality", nor would there be "any reason of public convenience that justifies such extinction"[40].

Balbino da Cunha did not limit his veto to reasons of convenience. He resorted to the Additional Act[41] through the prism of the Interpretation Law[42], and he argued that the project was unconstitutional. According to the president, "the present law, hurting the provincial interests, also offends the general interests of the nation, since it alters the judicial organization", affecting "the conditions of existence and functioning of a political power, recognized by the constitution as one of the fundamental columns of the state". Inspired by the centralist understanding of the Conservative Party, the president interpreted restrictively the prerogative of the provincial legislatures: "the attribution granted

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[36] Additional Act of 1834: "Art.13. The Laws, and Resolutions of the Provincial Legislative Assemblies, on the objects specified in arts. 10 and 11, will be sent directly to the President of the Province, who is responsible for sanctioning them".

[37] *Dezenove de Dezembro*, Curitiba, September 3rd, 1888, p. 1.

[38] Additional Act of 1834: "Art. 15. If the President deems that he must deny the sanction, as he understands that the Law or Resolution does not suit the interests of the Province, he will do so by this formula « Return to the Provincial Legislative Assembly », explaining under his signature the reasons on which it was founded. In this case, the Project will be submitted to a new discussion; and if it is adopted as is, or modified in the sense of the reasons given by the President, by two-thirds of the votes of the members of the Assembly, it will be forwarded to the President of the Province, who will sanction him. If it is not adopted, it cannot be proposed again in the same session".

[39] *Gazeta Paranaense*, Curitiba, August 31st, 1888, p. 3.

[40] *Gazeta Paranaense*, August 31st, 1888, p. 3.

[41] Additional Act of 1834: Art. 16. When, however, the President denies the sanction, as he understands that the Project offends the rights of some other Province, in the cases declared in § 8 of art. 10; or the Treaties made with Foreign Actions; and the Provincial Assembly judges the opposite, by two-thirds of the votes, as in the preceding article will be the Project, with the reasons alleged by the President of the Province, brought up to the attention of the Government and the General Assembly, for it to finally decide whether it should be sanctioned".

[42] Additional Act Interpretation Law: "Art. 7th. Art. 16 of the Additional Act implicitly includes the case in which the President of the Province denies the Sanction to a Project when he believes that it offends the Constitution of the Empire".

by the Additional Act[43] to the provincial assemblies on the judicial division of the provinces cannot be achieved with the discretionary power of those legislatures to alter the [...] judicial organization". Considering that: 1) the "art. 179, II, of the Constitution[44] determines [...] that no law will be established without public utility", 2) the "art. 83, I, of the same Constitution[45] prohibits [...] to the general councils (current assemblies) the proposal of law or deliberation on the general interests of the nation", and 3) the "art. 11, § 9º, of the Additional Act[46] disposes [...] that said assemblies should watch over the constitution", Balbino da Cunha concluded, "the present law is unconstitutional, and therefore cannot be sanctioned"[47].

Predictable, the attempt to lift the presidential veto was faster than the approval of the project. Taking the front line, a provincial deputy demanded, "the project that extinguishes the judicial district of S. José dos Pinhais returned without sanction by the president of the province, and should be included in the agenda". After the approval of the application, the bill was discussed and approved by "unanimity" of the legislature, thus fulfilling the constitutional requirement of the qualified majority[48]. With the overthrow, the provincial law would come into force, unless it offended rights of another province, treated with a foreign nation or the constitution. Having claimed unconstitutionality, Balbino da Cunha prevented the law from entering into force, and suspended its publication under the terms of the Additional Act[49]. The "laws voted by two-thirds of the members of the assembly, [one] which suppresses the judicial district of S. José dos Pinhais and [another] which transfers the functions of general director of public education to one of the Institute's professors", protested the *Dezenove de Dezembro*, were submitted by the presidency to "government and general assembly", for the latter to decide on its conformity to the constitution[50].

According to the Liberal Party interpretive guideline, such a measure was not among the prerogatives of the presidents and offended the value of regional autonomy. "The reasons for not sanctioning the bill voted by the assembly

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[43] Additional Act of 1834: "Art.10. It is incumbent upon the same Assemblies to legislate: § 1 On the civil, judicial, and ecclesiastical division of the respective Province, and even on the transfer of its Capital to the place that suits the most".

[44] Political Constitution of the Empire of Brazil: "Art. 179. The inviolability of Civil, and Political Rights of Brazilian Citizens, which is based on freedom, individual security, and property, is guaranteed by the Constitution of the Empire, as follows: [...] II. No Law will be established without public utility".

[45] Political Constitution of the Empire of Brazil: "Art. 83. These Projects Councils cannot propose or deliberate: I. On the general interests of the Nation".

[46] Additional Act of 1834: "Art. 11. The Provincial Legislative Assemblies are also responsible for: [...] § 9º Watching over the Guard of the Constitution and the Laws in their Province, and represent the General Assembly and the Government against the Laws of other Provinces that offend their rights".

[47] *Gazeta Paranaense*, Curitiba, August 31st, 1888, p. 3.

[48] *Dezenove de Dezembro*, Curitiba, September 1st, 1888, p. 2.

[49] Additional Act of 1834: "Art. 24. In addition to the duties, which by law are incumbent upon the Presidents of the Provinces, they are also responsible for: [...] § 3º Suspending the publication of the Provincial Laws, in the cases, and by the manner marked in arts. 15 and 16".

[50] *Dezenove de Dezembro*, Curitiba, September 4th, 1888, p. 3

extinguishing the judicial district of S. José dos Pinhais", struck a deputy, "showed the weakness and ignorance of the president". And he reasoned: "given the express letter of art. 10, § 1º, of the Additional Act to the Constitution of the Empire", not even the most obsessed partisanship would have denied "the provincial assemblies competence to legislate on the civil, judicial, and ecclesiastical division in the respective provinces". If Balbino da Cunha denied "sanctioning the bill in question he was in its full right, but only if he did it within the limits of his competence", i.e., if he alleged only reasons of convenience "without wanting to extort the rights of the provincial legislative branch" by invoking "a ridiculous unconstitutionality". Finally, he slashed: "in what iron circle does your friends' unreasonable ambition wants to make Your Excellency compress and limit the competence of the provincial legislature?"[51]

"Much later than it was reasonable to expect", the *Gazeta Paranaense* objected, "the mask of the two-way support that the pseudo-liberalism of this land pretended to render to the current administration was untied". As the conservative organ clarified, the Oliveira e Sá and Alves de Araújo clan did not hesitate to use a constitutional attribution to enact a political retaliation against Faria Sobrinho in the form of an "authoritarian nod" from the assembly to the president of Paraná, who did not share "with it the ideas of petty persecution"[52]. Seeing the retaliation frustrated, "the assembly only considered itself in conflict with the administration when the president, slipping into the politicism, understood that he should limit the legislature's attributions"[53], justified the *Dezenove de Dezembro*.

The conflict between the provincial legislative and executive branches occurred around the interpretation of the Additional Act. Although rooted into local interests and conveniences, the disagreement over the constitutional prerogatives occurred according to general interpretive standards, circulating throughout the Empire. Following the doctrine of their party, the liberal deputies considered the extinction of the judicial district of S. José as a simple exercise of a franchise given to the assemblies by the Additional Act, and the unconstitutionality alleged by the president, an arbitrary act against the constitution. According to his party guidelines, the president considered the same extinction as an abuse, and the suspension of the provincial law through an appeal to the general assembly, as a means to enclose the provincial assembly to its constitutional boundaries. This particular episode enacted arguments and guidelines linked to national parties and movements. Then, it presents a glimpse of the interpretive novel built around the Additional Act. The particular event belonged to a general narrative in which the clashes were not fought because of an abstract concept of constitution, but because of values and interests entrenched into different conceptions of this concept.

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[51] *Dezenove de Dezembro*, Curitiba, September 1st, 1888, p. 1.

[52] *Gazeta Paranaense*, Curitiba, September 4th, 1888, p. 1., p. 1. In this regard, even *A Republica* (Curitiba, September 10th, 1888, p. 3) agreed with the government newspaper: "the legislators of the province" take advantage of "the majority they have in the Assembly to exercise political revenge".

[53] *Dezenove de Dezembro*, Curitiba, September 3rd, 1888, p. 1.

### 2.2. João Coelho Gomes Ribeiro: the anonymous behind *The government and the opposition*

The censures of the liberal party of Paraná against Balbino da Cunha were opposed by an anonymous contributor of *Gazeta Paranaense*, who wrote in defense of the president in *The government and the opposition*. A sequence of four propaganda editorials, the articles sought to justify Balbino da Cunha's veto in the case of the judicial district of S. José, especially his claim of unconstitutionality on the provincial law: a measure that the anonymous himself had advised and then put into practice when elaborating the presidential reasons for non-sanction. There are considerable evidence and testimony to hold the conclusion that the chief of police João Gomes was the anonymous behind *The government and the opposition*. It does not suit to expose it here, as it exceeds the limits and purpose of this article. A few considerations about this curious character from Imperial Brazilian are enough for now.

According to Sacramento Blake[54], João Coelho Gomes Ribeiro was the "son of José Coelho Gomes Ribeiro and natural from the city of Rio de Janeiro", having earned "a bachelor's degree in social and legal sciences from the S. Paulo Law School". He entered "the judiciary with the post of municipal and orphans judge in Baependi, Minas Gerais". Then, Blake exposes a list of eight works[55] as to reveal that João Gomes was a wannabe legal scientist. As a magistrate of the Brazilian Empire, he was immersed in the circularity of public service positions[56]. Starting his career in Minas Gerais for the exercise of a minor judicial function, he found in Paraná an opportunity for promotion. He was appointed judge of law in 1886 by the ministry of August 20th, chaired by the Baron of Cotegipe.

It took him a long time to assume this position, beyond the considerable legal term necessary in a country with large dimensions and scarce means of access. In November 1886, the "Ministry of Justice in Notice of the current 17th" communicated the President of Paraná that "the legal term of five months for the judge of law João Coelho Gomes Ribeiro to assume the exercise of the respective functions in the judicial district of S. José dos Pinhais, in this province, to which he was appointed by decree of June last, was extended for two more months"[57]. In the exercise of his position, he was skilled in the management of his electoral prerogatives: "he plotted, asked for votes, distributed jokes and even ballots in a public square"[58]. Just like most magistrates of his time, when it would be problematic to separate politics, administration, and jurisdiction: freely appointed by the central government, the judiciary was a partisan as well.

A few months later, he was promoted once again to a position more suited to his political desires, despite of being considered a post of magistracy at that time. On July 31st, 1888, the president of Paraná communicated: "yesterday the judge

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[54] Augusto Victorino Alves Sacramento Blake, *Dicionário bibliográfico brasileiro,* v. 3, Rio de Janeiro, Imprensa Nacional, 1895, p. 399.

[55] Augusto Victorino Alves Sacramento Blake, *Dicionário bibliográfico brasileiro*, *op. cit.*, p. 399-400.

[56] José Murilo de Carvalho, *A construção da ordem...*, *op. cit.*, p. 145-168.

[57] *Gazeta Paranaense*, Curitiba, February 13th, 1887, p. 1.

[58] *Dezenove de Dezembro*, Curitiba, December 31st, 1887, p. 3.

of law João Coelho Gomes Ribeiro assumed the position of chief of police of this province, for which he was appointed by the decree of last May 2nd"[59]. Right-hand man of president Balbino da Cunha, João Gomes exercised great influence over the provincial executive branch, mainly to satisfy the interests of the dominant family in the Conservative Party of Paraná. About this influence, an opponent testified, "Mr. João Gomes starts to rule again in the [presidential] palace, of which he was absent for some weeks. It is believable that the president of Paraná, always subservient, would bow down to unreasonable impositions, as at other times, just so as not to lose his mentor"[60].

Born in Rio de Janeiro, João Gomes acted as a political and legal mentor for Balbino da Cunha, who was born in Minas Gerais. Surprisingly, both officers appointed by the central government, respectively, advised and set forth measures favorable to a regional oligarchy of Paraná, the Correia-Nácar family. This aspect reveals how flexible the ties of centralization were since the delegates of the center were not impersonal officials. On the contrary, they used their positions to repay favors and promote themselves in the public career. In the analyzed case, the bridge facilitating the transit of central and regional interests was the senator Correia, to whom both the president and the chief of police owed their positions in the province: "The baron of Aza Negra is grateful to Mr. senator Correia, who runs the ministry"[61], denounced an opponent. On another occasion, he did not mention the name of the powerful officer, limiting himself to veiled allusions: "since Mr. Balbino da Cunha is still conserved in the presidency, the influence [over the ministry] of the egregious citizen who exercises a mandate on behalf of the 1st electoral district of the province is fully shown"[62]. About João Gomes, in particular, the stories told "that a senator[63] remembers with nostalgia the times when *J. Criança* use to dance on his knees"[64].

The senior official used his prestige and influence in the center to secure protégés in his home province. Grateful, the delegates of the central government represented regional family interests in the exercise of their positions. In the light of these revelations, the suggestion of the *Dezenove de Dezembro* in *The commissioned work* becomes less mysterious: "the well-known advisor (cannot be another) who explained to Mr. Balbino da Cunha the reasons for not sanctioning the project that extinguishes the judicial district of S. José dos Pinhais". Referring to *The government and the opposition*, the liberal organ added, "the loyal advisor should listen to his conscience and do not waste time to defend the ordered work"[65]. Having conceived the reasons for non-sanction, João Gomes came in

[59] *Gazeta Paranaense*, Curitiba, August 4th, 1888, p. 1.

[60] *Sete de Março*, Curitiba, May 18th, 1889, p. 4.

[61] *Sete de Março*, Curitiba, March 30th, 1889, pp. 3-4.

[62] *Sete de Março*, Curitiba, May 18th, 1889, p. 4.

[63] It remains to be seen, however, who the liberal organ talked about: senator Correia, or Evaristo Ferreira da Veiga, the chief of police's uncle. That *remember* left no doubt that the spectacle took place on the knees of Correia. Months before, after all, the dancer was "disgusted by the deaths of his uncle and auntie, senator Evaristo Ferreira da Veiga and his wife D. Francisca L. Ferreira da Veiga" (*Gazeta Paranaense*, Curitiba, April 13th, 1889, p. 1).

[64] *Dezenove de Dezembro*, Curitiba, June 25th, 1889, p. 4.

[65] *Dezenove de Dezembro*, Curitiba, September 12th, 1888, p. 1.

defense of his own interpretation of the Additional Act when reproached in the public opinion tribunal.

## III. *THE GOVERNMENT AND THE OPPOSITION*: SOURCES OF PUBLIC DISCUSSION

This chapter presents *The government and the opposition*, an episode of the interpretive novel about the Additional Act. The four editorials allow to grasp a national game of interpretation implied within the provincial dispute. Circulating up and down the instances of a moral responsibility tribunal, the public discussion brought together particular and general indications, and so allowed to build the path from the regional episode to a great constitutional issue of Imperial Brazil. As the propaganda texts would not make sense out of the debate of which they were part, the chapter is somewhat extensive, which is why it is divided into three sub-chapters, one for the first two, another for the last two anonymous articles, and, between them, one for the discussion of the matter up and down the public opinion tribunal.

### 3.1. *The government and the opposition I* and *II*

"Without the slightest sound reason", João Gomes began, "the acts of the provincial government for which it denied sanctioning the assembly's resolutions were lately censored by the opposition". He referred to "the extinction of the judicial district of S. J. dos Pinhais" and "the annexation of the position of general director of public education [...] to that of a teacher at the Institute of Education". Very "far from being a usurpation of other people's attributions or a fierce contest of competence", he continued, the veto based on the doubt about the constitutionality of the legislative act would be "only the consecration of the obliged solemnity of the recourse to a higher and sovereign power", that is to say, the "general assembly", in search of "an authentic solution for the disagreement in such a serious matter" as "that of the interpretation and application of a constitutional precept"[66].

For the recourse to the higher court to be authorized, however, would it be necessary "that the law violates the constitution directly" by affronting "its own letter", as "insinuates the opposition"? Resorting to *Direito público brasileiro*, the anonymous argued that the provincial laws which "by anyway, when in contradiction with constitutional precepts, attributions of other power or the Brazilian's civil or political rights" would be "excess or abuse of authority"[67]. Both "by law" and "by principles", besides, it would be "evident [...] that provincial assemblies cannot legislate" about the general interests of the nation "directly or indirectly"[68]. The editorialist invoked the "professor of the academy of Recife"

[66] *Gazeta Paranaense*, Curitiba, September 5th, 1888, p. 1.

[67] José Antônio Pimenta Bueno, *Direito publico brasileiro...*, *op. cit.*, p. 181 *apud Gazeta Paranaense*, Curitiba, September 5th, 1888, pp. 1-2 .

[68] José Antônio Pimenta Bueno, *Direito publico brasileiro...*, *op. cit.*, p. 182 *apud Gazeta Paranaense*, Curitiba, September 5th, 1888, p. 1.

Vicente Pereira do Rego's *Elementos de direito administrativo brasileiro*[69], but the quote actually belonged to *Direito público brasileiro* once again: "the general assembly must revoke any provincial law that directly or indirectly offends the constitution, the limits drawn by the 10th and the 11th articles of the Additional Act, the general interests or impositions of the nation, the treaties and the rights of other provinces"[70]. From the distinction between general and provincial interests created by the Additional Act and adjusted by the Interpretation Law, it seemed absurd to Balbino da Cunha's advisor that the exercise of a provincial competence could offend "the general conditions of existence and functioning of a national political branch", as the whole judiciary after the Interpretation Law.

Thereafter, the chief of police dealt with the "annexation of the post of director of public education to that of a professor at the Institute", a subject of little relevance in this narrative, except for the quote from the Viscount of Bom Retiro, extracted from a parliamentary debate in which the senior Liberal official discussed the interpretation of the Additional Act with senator Correia[71], source to be retaken ahead. About "the judicial district of S. José", João Gomes would deal with it "in the following number"[72].

In *The government and the opposition II*, he fulfilled his promise: the refusal to "sanction the resolution of the assembly that extinguishes the judicial district of S. José dos Pinhais is justified and valid as a legal corrective to a flagrant violation of the constitution". The support for this conclusion was a precedent, the "scandalous fact [...] of the extinction of the judicial district of Itajaí, in [the province of] Santa Catarina", which occurred "in 1880, that is, during the liberal situation [at the central executive branch]". The question was exposed by the "senator Teixeira Júnior, current Viscount of Cruzeiro", in the "senate session of June 19th, 1880". Listening to the speech against the act of Santa Catarina's legislature, provoked the anonymous, "the minister of justice, senator Dantas, *unsuspected to the opposition*", as he was liberal, "qualified the assembly's act as an abuse, and so did the prime minister, senator Saraiva"[73].

João Gomes reinforced similarities and omitted differences to make the analogy stronger since the Provincial Law n. 861, of February 4th, 1880, was criticized by Dantas and Saraiva not for extinguishing the judicial district of Itajaí, but for preventing the judge of law Lobão Cedro to continue the investigation "about the existence of a horrible corruption case that is said to have occurred in the colonies of *Brusque* and *Príncipe D. Pedro*". Suspect of committing it, the "bachelor Olímpio Pitanga" was the leader of the liberal majority and president of the provincial assembly of Santa Catarina. Teixeira Júnior read this denunciation to a senate eager for information, and found it in

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[69] Vicente Pereira do Rego, *Elementos de direito administrativo brasileiro para uso das faculdades de direito do Império,* Recife, Tipografia Comercial de Geraldo Henrique de Mira & C., 1860.

[70] José Antônio Pimenta Bueno, *Direito publico brasileiro...*, *op. cit.*, p. 104 *apud Gazeta Paranaense*, Curitiba, September 5th,1888, pp. 1-2 .

[71] *Anais do senado do Império*, session of August 31st, 1880, pp. 416-417 *apud Gazeta Paranaense*, Curitiba, September 5th, 1888, pp. 1-2.

[72] *Gazeta Paranaense*, Curitiba, September 5th, 1888, pp. 1-2.

[73] *Gazeta Paranaense*, Curitiba, September 7th, 1888, pp. 1-2.

an article published by a Rio de Janeiro newspaper, written by Lobão Cedro himself, which referred to evidence published in the "Santa Catarina press"[74].

Having become detached by the extinction of the judicial district, the judge of law had written in *Gazeta de Noticias* to answer to "Mr. bachelor Olímpio Pitanga, in his article published in the *Jornal do Commercio* of recent May 27th"[75], in which the liberal from Santa Catarina defended himself against the reproach imputed by Teixeira Júnior, not at the session of June 19th, but at the one "of the current 24th". Pitanga was "still shaken by the impression of profound disgust that caused me to hear from the top of the senate the echo of this slanderous falsehood, woven by my resentful and indefatigable persecutors"[76].

In the senate session of May 24th, 1880, Teixeira Júnior had exposed the case of the judicial district of Itajaí for the first time, stressing that "this judicial district has now been extinguished by having its immense territory annexed to the important judicial district of S. Francisco, already encumbered with three terms – Parati, Joinville and S. Francisco, the headquarters and very distant from Itajaí". To this comment, replied "Mr. Saraiva (prime minister): It was an abuse of the provincial assembly that the government can only stigmatize". Further on, the minister of justice, senator Dantas, declared to accompany "completely the noble prime minister", and that he had nothing "to add"[77]. Belonging to the conservative opposition, the future Viscount of Cruzeiro criticized the president of Santa Catarina for having extinguished the judicial district by sanctioning the provincial law. As Teixeira Júnior himself noted on June 19th, the president of Santa Catarina had objected to this moral responsibility "in the newspapers of May 26th": "Mr. Teixeira Júnior said yesterday at the senate that I sanctioned the law suppressing the judicial district of Itajaí [...]. In support of the truth, I must say that I did not sanction such a measure, nor in any way did I apply for it"[78].

Back to the second editorial, the chief of police quoted only the aspects of the case most favorable to his argument, and focused on an excerption in which Teixeira Júnior, senator Correia and minister Dantas disagreed on the prerogative of the presidential sanction after the overthrow of the veto by two-thirds of the provincial assemblies. Conservatives, the first two considered it as a free act, while the third, liberal, considered it mandatory. "After declaring himself according to the interpretation given to the [...] Additional Act by the senator of Paraná, Mr. Correia", argued João Gomes, Teixeira Júnior "then follow the reading [...] of a letter from the former president of Santa Catarina, communicating not having sanctioned that law, even when it returned to the president after being voted by two-thirds of the legislature". He just enforced the law "based on art. 19th"[79] of the Additional Act[80].

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[74] *Gazeta de Noticias*, Rio de Janeiro, June 19th, 1880, p. 3 *apud Anais do senado do Império*, session of June 19th, 1880, pp. 220-221.

[75] *Gazeta de Noticias*, Rio de Janeiro, June 19th, 1880, p. 3. *apud Anais do senado do Império*, session of June 19th, 1880, pp. 220-221.

[76] *Jornal do Commercio*, Rio de Janeiro, May 27th, 1880, p. 4.

[77] *Anais do senado do Império*, session of May 24th, 1880, pp. 172 and 177, respectively.

[78] *Jornal do Commercio*, Rio de Janeiro, May 26th, 1880, p. 3 *apud Anais do senado do Império*, session of June 19th, 1880, p. 222 .

[79] *Gazeta Paranaense*, Curitiba, September 7th, 1888, p. 2.

Praising him for not having any moral responsibility for such a provincial law, the future Viscount of Cruzeiro considered, however, that "the president of the province would have better attended to the interests on which he was watching if, instead of enforcing this law, he had suspended its publication" as prescribed by the "Additional Act" and the "Interpretation Law" for "certain and determined cases". According to the senator from Rio, a provincial law extinguishing the judicial district of Itajaí implicated a "manifest violation of the art. 179, II, of the Constitution", which stated, according to an aside from another member of the chamber, that "no law will be enacted without public utility". And Teixeira Júnior concluded, "if this law does not consider the public utility and, on the contrary, manifestly harm the legitimate interests of a large population, it would be the case of being considered unconstitutional"[81].

The anonymous used another argumentative stratagem by omitting in the transcription the objections endured by Teixeira Júnior's understanding. Linked to a conservative interpretive guideline, the senator's interpretation expanded the prerogatives of the presidents since they were delegates of the central government in the provinces. The liberal Dantas soon objected: such understanding was "a sun hat that justify anything"[82]. Based on it, the presidents would constrain provincial autonomy even further. Any provincial law not considered to be of public utility would be unconstitutional, at the discretion of the representatives of the center in the provinces. Not by chance, other liberals also disagreed with this doctrine. "It is a law contrary to the good of the province, but it is not unconstitutional in the form of the Additional Act", pondered Leão Velloso on the case of the judicial district of Itajaí[83].

Based on the *sun hat*, João Gomes used the words of Teixeira Júnior to argue that "[the president] could suspend the provincial law and bring it to the attention of the government so that the general assembly could definitively decide whether or not it should be sanctioned". And he added, "art. 16th of the Additional Act[84] provides for this case". This time, however, the chief of police did not omit Leão Velloso's disagreement: "but this law is not in this case", that is, "it is not understood in any of the hypotheses of art. 16th". To which the future Viscount of Cruzeiro replied, "may the noble senator contest that it is included in

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[80] Additional Act of 1834: "Art. 19. The President will give or deny the sanction, within ten days, and if he does not, it will be understood that he gave it. In this case, and when, having been sent him back the Law, as determined in art. 15, he refuses to sanction it, the Provincial Legislative Assembly will have the law published with this declaration; then, signed by the President of the same Assembly".

[81] *Anais do senado do Império*, session of June 19th, 1880, p. 222 *apud Gazeta Paranaense*, Curitiba, September 7th, 1888, p. 2 .

[82] *Anais do senado do Império*, session of June 19th, 1880, p. 222.

[83] *Anais do senado do Império*, session of June 19th, 1880, p. 223.

[84] Additional Act of 1834: Art. 16. When, however, the President denies the sanction, as he understands that the Project offends the rights of some other Province, in the cases declared in § 8 of art. 10; or the Treaties made with Foreign Actions; and the Provincial Assembly judges the opposite, by two-thirds of the votes, as in the preceding article will be the Project, with the reasons alleged by the President of the Province, brought up to the attention of the Government and the General Assembly, for it to finally decide whether it should be sanctioned".

the hypothesis of art. 7th" of the Interpretation Law[85]? Combining this norm "with those of art. 16 and art. 24, § 3, of the Additional Act"[86], argued the conservatives, "the president of the province [of Santa Catarina]" would have "the power to suspend the publication of provincial laws", and could "have rendered this relevant service not only to the large population of Itajaí [...], but also to the judiciary by avoiding such a clear offense to its institutional prerogatives"[87]. João Gomes then silenced another liberal aside: "it was never understood in this sense", protested Leão Velloso[88].

Selecting information for his argument, the chief of police proceeded to the reasons for non-sanction of the president of Santa Catarina, "almost identical to those of the presidency of this province"[89]. By quoting Teixeira Júnior, who read the reasons to the senate, the anonymous launched the premise that "the province has nothing to profit from the extinction of a judicial district like that of Itajaí, created 12 years ago and which seems increasingly necessary for the growth of its population that already exceeds twenty thousand inhabitants scattered in villages, some of which are far from the judicial district headquarters"[90]. By analogy, the same would apply to the judicial district of S. José dos Pinhais, created "11 years ago" and with "more than sixteen thousand inhabitants" also "sparse in distant villages" and "colonies". Moreover, "the annexation of the judicial district of S. José [...] [would] make that of Curitiba excessively extensive" since it would extend "from the borders of the province with S. Paulo to those with Santa Catarina"[91].

Besides causing damage to the administration of justice and the rights of a considerable population, João Gomes exposed that such extinction was a retaliation of the liberal opposition against the ex-president Faria Sobrinho. He did it discreetly when he cited the future Viscount of Cruzeiro, who declaimed to the senate the article of the judge of law Lobão Cedro, published in the Rio de Janeiro press: "the suppression of a judicial district only out of hatred or revenge against the judge of law, whoever she is, will always be a blatant injustice, a legal absurdity, a severe damage to acquired rights", an event "that will last forever in the legislative annals of the respective provincial assembly"[92]. With this defense of Balbino da Cunha, now with his own words, the anonymous "demonstrated

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[85] Additional Act Interpretation Law: "Art. 7th. Art. 16 of the Additional Act implicitly includes the case in which the President of the Province denies the Sanction to a Project when he believes that it offends the Constitution of the Empire".

[86] Additional Act of 1834: "Art. 24. In addition to the duties, which by law are incumbent upon the Presidents of the Provinces, they are also responsible for: [...] § 3º Suspending the publication of the Provincial Laws, in the cases, and by the manner marked in arts. 15 and 16".

[87] *Anais do senado do Império*, session of June 19th, 1880, p. 223 *apud Gazeta Paranaense*, Curitiba, September 7th, 1888, p. 2 .

[88] *Anais do senado do Império*, session of June 19th, 1880, p. 223.

[89] *Gazeta Paranaense*, Curitiba, September 7th, 1888, p. 2.

[90] *Anais do senado do Império*, session of June 19th, 1880, p. 222 *apud Gazeta Paranaense*, Curitiba, September 7th, 1888, p. 2 .

[91] *Gazeta Paranaense*, Curitiba, September 7th, 1888, p. 2.

[92] *Gazeta de Noticias*, Rio de Janeiro, June 19th, 1880, p. 3 *apud Anais do senado do Império*, session of June 19th, 1880, p. 221 *apud Gazeta Paranaense*, Curitiba, September 7th, 1888, p. 2.

*quantum satis*" that the provincial assembly had exorbitated from its prerogatives, and perpetrated "unconstitutional acts before the law, the opinion of the authors and parliamentary precedents". It was, therefore, "*ipso facto* [...] fully justified the act of the president of Paraná as he opposed his legal and transitory veto to such inconvenient and abusive measures"[93].

### 3.2. Up and down the public opinion tribunal

The public discussion circulated up and down the public opinion tribunal: from the province to the center, from the center to the province. Widely debated at the provincial instance, the issue of the judicial district of S. José soon reached the highest level of the public opinion tribunal, and the speeches backlashed once again in the Paraná press. "At the senate and the chamber of deputies, the reasons for the non-sanction of the president of this province in the project for the extinction of the judicial district of S. José dos Pinhais have been widely discussed and duly criticized", noted the *Dezenove de Dezembro*. And the liberal organ added that "Mr. Alves de Araújo", of the Oliveira e Sá and Alves de Araújo clan, has spoken "with great advantage" in the chamber. In the senate, "Mrs. Silveira Martins and Cândido de Oliveira" did the same so that a pronouncement of the "prime minister", now João Alfredo, on the fate of the President of Paraná was expected[94].

The liberal Alves de Araújo had delivered a speech at the temporary chamber on September 3rd. He started by censoring "the resistance of the government [both provincial and central] to the competence that the provincial assemblies have", especially in the case of the "judicial district of S. José". When claiming that the suspended law was unconstitutional, the president of Paraná would have revoked "the Additional Act to reestablish the provincial general councils". Painting the reasons for non-sanction as a straw man fallacy, the representative of the Oliveira e Sá and Alves de Araújo clan referred to the original model of the 1824 Charter. Dialoguing with constitutional history, he criticized the delegate of the central government in Paraná for "promoting reforms alone, revoking the prerogative [...] that the Additional Act grants to provincial assemblies". Only in four cases did the constitution authorize "the president [to] send to the general assembly and the government" the resolutions of the regional legislatures: "when they offend the constitution of the Empire, the treaties, general taxes, and the rights of other provinces". Based on the liberal interpretive guideline, which did not accept the *sun hat*, the representative sentenced, "out of these cases" the presidency "will be subject to the deliberation of the [provincial] assembly"[95].

Throughout the speech, the objection of a deputy stood out: "they suppressed the judicial district because a conservative judge was appointed", to which the representative from Paraná replied "I admit the hypothesis. Suppose, Mr. President, that the judicial district was suppressed because the appointed judge was not suitable for the province". Being out of the four cases mentioned above, it would not be up to the "government" or to the "president of Paraná" to correct it. On the contrary, "the only competent authority" would be "the electoral

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93 *Gazeta Paranaense*, Curitiba, September 7th, 1888, p. 2.

94 *Dezenove de Dezembro,* Curitiba, September 10th, 1888, p. 2.

95 *Anais da câmara dos deputados*, session of September 3rd,1888, p. 12.

body", which expressed its opinion in the provincial elections. Inspired by his interpretive guideline, Alves de Araújo did not admit "such a violation of the Additional Act" because "it contained, if not the only, at least the few guarantees that the province has to resist to the center". With unsuspected testimony, but not without contradiction to his party guideline, Alves de Araújo concluded that the suspension of the provincial law could not be admitted "by a serious [central] government", from which he demanded a solution: "if the central government can correct the acts, very well; if not, tear the Additional Act, burn it"[96].

In response, on September 5th, the minister of the Empire defended Balbino da Cunha, and sought to "examine the issue under another aspect, that of the regularity of the acts practiced by the provincial assembly" of Paraná. Anchored in the conservative guideline, the minister spoke of "regular exercise of a constitutional attribution" and "fair appreciation of public conveniences". Although he did not "question the latitude of the provincial assemblies' attribution for regarding the civil and judicial division of the provinces", he maintained that such prerogative did not reach "the point of authorizing everything". On the contrary, it would be limited "by the principles of justice and morality", as well as "by the conveniences of the public good"[97].

Judicial district extinctions for political revenge were no secret or novelty, and the minister knew the reasons for extinguishing that of S. José, "assigned to a magistrate of honorable precedents, but who had the misfortune of not pleasing when he was president to the party that today has two-thirds in the provincial assembly". As Alves de Araújo objected, "the minister of the Empire is not a mentor to the provincial assemblies, he cannot correct them". And he admitted, "we do not want the judge because he was the president of Paraná for two years, he is hated all over the province and occupies a judicial district two leagues far from the Curitiba's, where he swears he will do the qualifications [of voters] to his discretion: he is an electoral judge". Further on, the representative from Paraná added, "[Faria Sobrinho] has put hundreds of people out of public civil service [...], and even lately he wasted a fortune from the public coffers". Given these statements, another deputy protested, "they only suppress judicial districts when they want to suppress judges"[98].

The provincial issue came to the senate on September 4th. According to the liberal Silveira Martins, the procedure of the president of Paraná would be "highly compromiser of our institutions", since it implies the "complete nullification of the provincial assemblies", which were competent to legislate on "the judicial division" of the provinces. They created "the judicial districts, and the institution that creates is the same that suppresses". Referring to the provincial law that extinguished the judicial district of S. José, Martins clarified that Balbino da Cunha had vetoed it "for being unconstitutional". Worse than that, "based on articles of the general councils of the original Charter, which were suppressed in 1834". And Martins finally revealed the problem of sending a provincial law to the central legislature: "The general assembly does not take care of other things, let alone that. The provincial laws that are submitted to it remain forever unsolved".

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96 *Anais da câmara dos deputados*, session of September 3rd, 1888, pp. 13-14.

97 *Anais da câmara dos deputados*, session of September 5th, 1888, pp. 60-63.

98 *Anais da câmara dos deputados*, session of September 5th, 1888, pp. 60-63.

Given the strategy adopted by the president to interfere with the autonomy of Paraná, the senator considered it "the government's duty [...] to dismiss an employee who causes such conflicts and endangers the institutions"[99].

"The senate must be informed that I took no part in the acts criticized by" the senator from Rio Grande do Sul, clarified Correia, from the Correia-Nácar clan. And he added, "[the president's] actions have been carried out under his own responsibility"[100]. In the next senate session, Silveira Martins implied: the "noble senator from Paraná took the floor and with such enthusiasm excused the president's actions that, if only Your Honor was not in hurry to declare beforehand that he had not contributed in any way to that procedure, it could be judged that Your Honor had been the advisor" of Balbino da Cunha[101]. The *Dezenove de Dezembro* echoed the same irony in the provincial first instance of public opinion: "Mr. Correia, as usual, has declared that he has no responsibility for the act in which *he took no part*"[102].

Correia's speech on September 4th, in fact, defended the delegate of the general executive in Paraná. "An assembly resolution suppressed the judicial district of S. José dos Pinhais and the president denied the sanction as he considered it unconstitutional. It is said that [...] he exorbitated of his prerogatives". Balbino da Cunha's act, however, would not be "definitive", at least according to art. 16 of the Additional Act[103]. "Voted the law by two-thirds of the members of the assembly", expounded the senator from Paraná, "the question comes to the general assembly, which is now gathered, and it will decide whether the president of the province has done well or not", and whether "the provincial assemblies can, on the grounds of judicial division, suspend a perpetual magistrate from exercise". Against the reproach on the legislature of Paraná, a senator offered an aside: "this is a dangerous theory at the present, one should not haggle over attributions of the provincial assemblies". With the mask of a high imperial officer, Correia replied, "I recognize all that the Additional Act gives them; I am examining the extension of one of them, which caused the use [...] of a prerogative of the president"[104].

What the conservative senator considered a use, the liberal opposition interpreted as an abuse. If "the sanction was denied to the project because it was inconvenient, it was right, but unconstitutional no", sentenced the Viscount of Ouro Preto. A second liberal added, "it was to avoid the two-thirds" of the provincial legislature. And a third demanded, not without contradiction with his party guideline: "the government has an obligation to have the law enforced

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[99] *Anais do senado do Império*, session of September 4th, 1888, pp. 23-24.

[100] *Anais do senado do Império*, session of September 4th, 1888, p. 24.

[101] *Anais do senado do Império*, session of September 5th, 1888, p. 31.

[102] *Dezenove de Dezembro*, Curitiba, September 10th, 1888, p. 2.

[103] Additional Act of 1834: Art. 16. When, however, the President denies the sanction, as he understands that the Project offends the rights of some other Province, in the cases declared in § 8 of art. 10; or the Treaties made with Foreign Actions; and the Provincial Assembly judges the opposite, by two-thirds of the votes, as in the preceding article will be the Project, with the reasons alleged by the President of the Province, brought up to the attention of the Government and the General Assembly, for it to finally decide whether it should be sanctioned".

[104] *Anais do senado do Império*, session of September 4th, 1888, pp. 25-26.

provisionally". To what Correia objected, "when the general assembly is open, it cannot". Before the insistence of the liberal opponent, the conservative struck: "while the general assembly is gathered, the Additional Act[105] does not allow any intervention from the government. When it is not gathered, the government is then responsible for having the law enforced provisionally"[106].

In the following session, the liberal opposition manifested itself through the speeches of Silveira Martins and Cândido de Oliveira. They demanded an attitude from João Alfredo, the prime minister, towards Balbino da Cunha. The first senator criticized the president of Paraná for intending to "restrict the attributions of the [provincial] assembly" by not "sanctioning the law as unconstitutional for it to come to the parliament that will never decide on the matter". Moreover, the president is said to have been backed on the "articles relating to the general councils that ended in 1834, and 54 years later, more than half a century, still relies on them". Cândido de Oliveira, on his turn, argued that the Additional Act would be "crystal clear when, emphatically, it gives the provincial assemblies the prerogative to legislate on the judicial division of the province". Vetoing the provincial law as unconstitutional, the president would have revealed a "dangerous tendency", that is, to "render the action of the provincial assemblies useless" and subvert the "constitutional meaning". The senator from Minas Gerais then provoked, "the silence of the honorable prime minister has only one meaning: the dismissal of Mr. Balbino Cunha"[107].

The expected positioning of the prime minister took place at the session of September 6th. Although he understood that, in this case, "the foundation of unconstitutionality" did not fit, João Alfredo declared that it was not a case of dismissal, much less that of the government to "took for itself the decision of the appeal that the president has made, and that it is up to the central legislative branch to decide". In support of his delegate in Paraná, João Alfredo considered it important not to forget: "a judicial district was suppressed to dismiss an adversary judge". And he added, "what will the magistracy be reduced to if the provincial assemblies, dominated by a party or factional spirit, judge themselves with the right to annihilate a branch that the constitution wants to be perpetual, independent, immovable? (*Supported*)". About Balbino da Cunha's veto, João Alfredo finally sentenced, "if I were in his place, I would not sanction the project", although only "concerning to the inconvenience of the measure"[108].

The singular prestige of the central executive branch entailed a telegraph battle at the provincial instance on the meaning of the speech delivered at the supreme court of public opinion. "Court, September 6th. The prime minister disapproved in the senate the reasons of unconstitutionality for which the president of Paraná denied sanction [to the resolution] of the judicial district of S. José dos Pinhais", celebrated the *Dezenove de Dezembro*[109]. The *Gazeta*

[105] Additional Act of 1834: "Art. 17. If the General Assembly is not meeting at that time, and considering the Government that the Project must be sanctioned, it may order that it be provisionally executed, until the General Assembly's final decision".

[106] *Anais do senado do Império*, session of September 4th, 1888, pp. 25-26.

[107] *Anais do senado do Império*, session of September 5th, 1888, pp. 31-35.

[108] *Anais do senado do Império*, session of September 6th, 1888, pp. 38-40.

[109] *Dezenove de Dezembro*, Curitiba, September 7th, 1888, p. 2.

*Paranaense*, on its turn, published a telegram of a "highly placed person": "Mr. prime minister stated that he would not sanction the law by extinguishing the judicial district of S. José dos Pinhais, and that there was no reason to dismiss the president of the province for denying sanction to such a partisan law". On the next page, there were two more telegrams, "Court, 7. Counselor João Alfredo, prime minister, defended the president of Paraná in the senate. Court, 8. It is false that the prime minister censored the procedure of the president of Paraná"[110]. In *The telegrams of the Gazeta*, the liberal organ replied that there is no "direct contradiction to our news: none of the official organ's telegrams states that the prime minister accepted the reasons for *unconstitutionality*, for which the president denied sanctioning the law that extinguishes the judicial district of S. José"[111].

### 3.3. *The government and the opposition III* and *IV*

In the middle of the telegraph battle, *The government and the opposition III* came to light. The chief of police responded to the criticism that his understanding had received in the national parliament. His aim was to "appreciate the *loyalty* with which, here in the province and even in the general assembly, the opposition has proceeded concerning the government's act by which it denied sanction to the provincial law extinguishing the judicial district of S. José". That is why João Gomes reproduced "the telegram sent from the capital [of Paraná] on August 30th [...] and published in the *Jornal do Commercio* on September 2nd", as well as "excerpts from the speeches of the senator Silveira Martins and of the deputy Alves de Araújo"[112]. Wanting "to suggest to the spirit of the unwary [...] the presumption that the president of Paraná had made the mistake [...] of reviving revoked provisions concerning to the extinct general councils", the telegraphic correspondent had manipulated information: "the President just denied sanction to the project extinguishing the judicial district of S. José dos Pinhais as unconstitutional. He justifies it arguing that art. 83, § 1, of the Constitution, forbids the general councils of the province to make a legislative proposal or deliberate on the general interests of the nation"[113]. By omitting the other reasons for non-sanction, he "predisposed the public opinion" and covered the provincial government "with ridicule", even finding "in the chamber of deputies and the senate a ground prepared for the seed he had sent to Rio de Janeiro on the wings of the telegraph"[114].

He referred to Alves de Araújo and Silveira Martins, who, "without even examining the text of the law [...], communicated to parliament and country in amazement, both astonished, that the president of Paraná had revoked the Additional Act!! And should be dismissed for the sake of public service!!"[115]. After sustaining that the president of Paraná revoked "the Additional Act to reestablish

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[110] *Gazeta Paranaense*, Curitiba, September 11th, 1888, pp. 2 and 3.

[111] *Dezenove de Dezembro*, Curitiba, September 11th, 1888, p. 2.

[112] *Gazeta Paranaense*, Curitiba, September 11th, 1888, p. 1.

[113] *Jornal do Commercio*, Rio de Janeiro, September 2nd, 1888, p. 1 *apud Gazeta Paranaense*, Curitiba, September 11th, 1888, p. 1 .

[114] *Gazeta Paranaense*, Curitiba, September 11th, 1888, p. 1.

[115] *Gazeta Paranaense*, Curitiba, September 11th, 1888, p. 1.

the general councils of province"[116], Alves de Araújo "read to the chamber of deputies only the end of the reasons for non-sanction in order to mean the exact opposite of the complete reasons meaning: the respect accorded by Balbino da Cunha to the constitution of the provinces", that is, the Additional Act. The false accusation that "the presidency grounded its reasons on a constitutional article already revoked and related to the extinct general councils", moreover, was answered in "art. 9 of the so quoted Additional Act"[117]. Dividing the legislative branch into general and provincial, argued João Gomes, the Act maintained for the assemblies the limit drawn to the old councils by art. 83rd, § 1, of the Charter: that of not proposing nor deliberating on the general interests of the nation belonging to the sphere of competence of the general assembly[118].

If Silveira Martins and Alves de Araújo still had doubts about the permanence of the constitutional precept, provoked the anonymous, they could consult with "the classic Marquis of S. Vicente", for whom "this repeal [of art. 83] does not exist, nor should it exist, since it was absurd to subject the general interests of the nation to the direction or disposition of a provincial branch"[119]. According to this conservative understanding, the fact that Balbino da Cunha had not incurred "the very serious fault of revoking the Additional Act" would be "ascertained and without possible contestation". On the contrary, his "own accusers" would have revoked "express and in perfect force precepts, not only from the Additional Act, but also from the Charter". Defended "in parliament" by the liberal opposition, this doctrine would be particularly objectionable when it comes to "representatives of the nation and obliged connoisseurs of its constitutional laws". Finally, the chief of police summoned the liberals of Paraná to a duel of public discussion by provoking "the opposition to prove the opposite, or justify their bosses on that point". And he added, "the silence will be the recognition of the mistake"[120].

"We cannot take this provocation seriously", objected the *Dezenove de Dezembro* in *The commissioned work*. Referring to the "notable assessor" of the president, the liberal organ simplified his arguments to better fight them, and pretended not to occupy "the public's attention with the refutation" of the "nonsense" defended in the columns of *Gazeta Paranaense*: 1) "suppress a judicial district is to change the judicial organization" and 2) "any project in which the government does not see public utility can no longer be sanctioned as it is unconstitutional". Although discussing these arguments was an injustice "to the public common sense", the liberal editorial referred to "our Additional Act questioner", as well as to a series of authoritative understandings, such as the "*Practical studies* of the Viscount of Uruguai", the report presented by the "minister of justice of the August 20th ministry, counselor MacDowell", or that of the "current Minister of Justice" Ferreira Vianna. Crowning the list of authorities,

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[116] *Anais da câmara dos deputados*, session of September 3rd, 1888, p. 12. *apud Gazeta Paranaense*, Curitiba, September 11th, 1888, p. 1.

[117] Additional Act of 1834: "Art. 9º It is the responsibility of the Provincial Legislative Assemblies to propose, discuss, and deliberate, in accordance with arts. 81, 83, 84, 85, 86, 87 and 88 of the Constitution".

[118] *Gazeta Paranaense*, Curitiba, September 11th, 1888, p. 1.

[119] José Antônio Pimenta Bueno, *Direito publico brasileiro...*, *op. cit.*, p. 182 *apud Gazeta Paranaense*, Curitiba, September 11th, 1888, p. 1.

[120] *Gazeta Paranaense*, Curitiba, September 11th, 1888, p. 1.

it mentioned "Mr. João Alfredo, prime minister, who did not, and could not, have taken on the ingenious unconstitutionality"[121].

Supporter of provincial autonomy, the *Dezenove* listed no less than three interpretations of the Additional Act backed on the authority of the central government. Besides the prime minister speeches, reports from two ministers of justice entered the list. Samuel MacDowell's "reported, without the slightest comment, the extinction of the judicial districts of Marajó, in Pará, and of Rio Tocantins, in Goiás, by the respective provincial assemblies"[122]. Ferreira Vianna's deserved a transcript in a previous edition of the liberal organ, in which the minister's opinion recognized the attribution of the provincial legislatures: "verifying that some region of the empire has fewer than 150 jurors, the government [...] would *present to the provincial assembly* the need to apportion the territorial division to the jurisdictions", trusting "that they would be in a hurry *to make the necessary change in the circumscriptions*"[123].

Back to *The commissioned work*, the editorial recommended to the "presidential advisor" to consult the "*Practical studies* of the Viscount of Uruguai"[124], to "get to know the fundaments of the authorized opinion of senator Silveira Martins, talent without opponent in parliament". Although "general interests of the nation", all the matters listed "in arts. 10 and 11 of the Additional Act such as the civil, judicial, and ecclesiastical divisions (art. 10 §1º), public instruction (art. 10 §2º) and others similar, cannot be included in the provision of art. 83, § 1, of the Charter since the 1834 reform" because they would be of "exclusive competence of the provincial legislature". After exposing the premises, the editorialist concluded, "the faithful advisor should listen to his conscience and do not waste his time defending the commissioned work"[125].

"We were really shaken in our conviction" when "we read the *Dezenove de Dezembro* article in response to ours", João Gomes quipped in *The government and the opposition IV*. Diverging about the conception of general interests, he maintained that "the arts. 10 and 11" did not revoke "art. 83 and its §§ of the Charter", these being "in full force, even regarding to the matters linked to those

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[121] *Dezenove de Dezembro*, Curitiba, September 12th, 1888, p. 1.

[122] Samuel Wallace MacDowell, *Relatório apresentado à Assembleia Geral Legislativa: na segunda sessão da vigésima legislatura pelo ministro e secretário de estado dos negócios da justiça*, Rio de Janeiro, Imprensa Nacional, 1887, p. 93 *apud Dezenove de Dezembro*, Curitiba, September 12th, 1888, p. 1.

[123] Antônio Ferreira Vianna, *Relatório apresentado à Assembleia Geral Legislativa: na segunda sessão da vigésima legislatura pelo ministro e secretário de estado dos negócios da justiça*, Rio de Janeiro, Imprensa Nacional, 1888, p. 65) *apud Dezenove de Dezembro*, Curitiba, September 10th, 1888, p. 1.

[124] Invoked to justify a liberal interpretation of the Act, the conservative pontiff's doctrine supported it on this point. Although he affirmed that "one of the attributions that the provincial assemblies have abused the most is certainly the one that gives them the additional act of making the province's civil, judicial and ecclesiastical divisions", he acknowledged that "the provincial laws that commit [the abuses] are not revocable by the general assembly", since they could not be "considered nor as offensive to the rights of other provinces, the Constitution and the Treaties". Therefore, they would not be subject to suspension "by the provincial president under the terms of art. 16 of the Additional Act" (Visconde do Uruguai, *Estudos práticos...*, *op. cit.*, v. 1, pp. 179-180).

[125] *Dezenove de Dezembro*, Curitiba, September 12th, 1888, p. 1.

two articles of the Additional Act". Thus, Silveira Martins and Alves de Araújo would have revoked "without the special procedure the art. 9" of the Act and "the art. 83 of the Charter". The provincial opposition, thus, would have taken over "with heroism [...] the error of its leaders" by sustaining the possibility of the provincial assemblies to legislate on the general interests of the nation whenever specified in arts. 10 and 11 of the Additional Act[126].

In the "work quoted by the opposition", the Viscount of Uruguai, cited by the anonymous, understood that "it is up to the provincial assemblies to propose, discuss and deliberate on the most interesting matters to their provinces on which they cannot legislate". And both of them added, "they cannot [propose] nor deliberate: 1st on the general interests of the nation (art. 9 of the Additional Act and 83 of the Constitution)"[127]. As João Gomes continued, "these deliberative attributions already belonged to the general councils and passed to the assemblies which, by the Additional Act, received legislative attributions as well"[128]. *A fortiori*, "the political corporation that cannot deliberate on a subject" cannot in any way "legislate on it" because "who cannot do less, cannot [...] do more". So understood the "Marquis of S. Vicente"[129]: "If art. 83 of the Constitution prohibited even the proposals on such matters, if art. 9 of the Additional Act confirmed this principle", the crown jurist reasoned, quoted by the chief of police, "for a valuable argument from less to more it is logical to conclude that who does not have the lesser right to propose, certainly does not have the greater to legislate, except if a clear and final disposition of arts. 10 and 11 of the additional act revoked the mentioned art. 83". And both of them interpreted, "however, this revocation does not and should not exist since it was absurd to subject the general interests of a nation to the direction or will of a provincial legislature"[130].

The liberal opposition could claim "that this is the peculiar understanding of the Conservative Party, which adhered to the doctrines of the Interpretation Law of 1840"[131]. The objection would not be applicable since "this is the doctrine accepted by the Liberal Party as well", as it emerged from an article written by "Olegário de Castro". When publishing "his project of judicial reform", the high magistrate had attached to it the respective "explanatory statement"[132] in which is explicit the commitment to conquer for the magistracy "the illusory independence that the Constitution promises, but which in fact never existed among us"[133]. Transcribing

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[126] *Gazeta Paranaense*, Curitiba, September 12th, 1888, p. 1.

[127] Visconde do Uruguai, *Estudos práticos...*, *op. cit.*, v. I, pp. 148 and 149, respectively *apud Gazeta Paranaense*, September 19th, 1888, p. 1.

[128] *Gazeta Paranaense*, Curitiba, September 19th, 1888, p. 1.

[129] *Gazeta Paranaense*, Curitiba, September 19th, 1888, pp. 1-2.

[130] José Antônio Pimenta Bueno, *Direito publico brasileiro...*, *op. cit.*, p. 182 *apud Gazeta Paranaense*, Curitiba, September 19th, 1888, p. 2.

[131] That is, the movement called regress by the opponents of the time, led by personalities like Bernardo Pereira de Vasconcelos and Paulino José Soares de Souza, future Viscount of Uruguai. In order to moderate the provincial franchises granted by the 1834 reform, the centralized reaction crystallized a first step in the 1840 Law of Interpretation, and founded an interpretive school organized around the conservative party.

[132] *Gazeta Paranaense*, Curitiba, September 19th, 1888, p. 2.

[133] Olegário Herculano de Aquino Castro, *Reforma Judiciaria*, *O Direito: revista mensal de Legislação, Doutrina e Jurisprudência*, v. 31, maio/ago. 1883, p. 163.

the opinion of the liberal magistrate, the anonymous asserted, "the faculty conferred by art. 10, § 1, of the Additional Act is undoubtedly broad, but for this very reason it is linked to the judicial organization, it is subject to the rules and conditions of jurisdiction that the central legislative branch may draw in harmony with public law and efficiency of the judicial branch"[134].

Then Minister of the Supreme Court of Justice and future president of the Supreme Federal Court, Olegário de Castro intended to "harmonize the prerogative of provincial assemblies with the general rights and interests of the state", and such a task was "one of the most difficult and important issues to be resolved in the [judicial] reform". To resolve it, he proposed "to define the conditions under which the attribution [...] conferred by the Additional Act, art. 10, § 1º, must be enacted"[135]. Although there was still no central legislative condition to the prerogative of legislating on the judicial division, Balbino da Cunha's advisor omitted this detail and argued that "the principles of judicial organization – the general interest of the nation – limit that attribution".

To continue his response to the *Dezenove*, the anonymous listed the authority of Ferreira Vianna, then minister of justice, to whom the provincial assemblies should "divide terms, judicial districts and peace districts whenever necessary, proportionate as possible to the concentration, dispersion, and needs of the inhabitants"[136]. The Charter itself, moreover, "ordered [...] the convenience of the peoples"[137] in the judicial organization. It would have been attempted in "various reform projects [of the judiciary]", including "that of the councilor Olegário". Olegário de Castro's draft proposed "a certain population and extension as the basis for the creation of provincial districts". And the advisor amended, by analogy: "for their extinction, the same principles must be considered". In exercising "their constitutional assignment to create and suppress judicial districts", therefore, "the provincial assemblies cannot legislate in a way that offends the general interests of the judicial organization because it is a matter for which the central legislative branch is competent"[138].

The opinion of the high magistrate served to demonstrate that some liberals accepted to restrict the prerogative of the provincial assemblies to guarantee the independence of the judiciary. The shade contained in *The government and the opposition*, however, was more restrictive to regional autonomy. Adopting a far-conservative position in the interpretive spectrum, the president of Paraná had adopted the opinion that, regardless of any general law, "the abuse by the assemblies in the exercise of the prerogative of suppressing judicial districts is a violation of the Constitution and must be corrected". Such an interpretation of the Additional Act

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[134] Olegário Herculano de Aquino Castro, *Reforma Judiciaria*, *op. cit.*, pp. 172-173 *apud Gazeta Paranaense*, Curitiba, September 19th, 1888, p. 2.

[135] Olegário Herculano de Aquino Castro, *Reforma Judiciaria*, *op. cit.*, p. 166.

[136] Pedro Antônio Ferreira Vianna, *Consolidação das disposições legislativas e regulamentares do processo criminal*, Rio de Janeiro, Tipografia e Litografia Carioca, 1876, p. 14 *apud Gazeta Paranaense*, Curitiba, September 19th, 1888, p. 2.

[137] Political Constitution of the Empire: "Art. 158. To judge the Causes in second, and last instance, there will be the Relations in the Provinces of the Empire, which are necessary for the convenience of the Peoples".

[138] *Gazeta Paranaense*, Curitiba, September 19th, 1888, p. 2.

would be not only possible, but also legitimate in the case of an "opinion issue, as the noble prime minister declared at the senate"[139]. Indeed, João Alfredo had declared: "The president [of Paraná] may have made a mistake in good faith and should not be condemned", especially "when it comes to an opinion issue, about which he says he followed an authority of all respected in Brazil, the Marquis of S. Vicente"[140].

The basic foundation of João Gomes' argument, in fact, was the far-centralist opinion of Pimenta Bueno. On the prerogative of art. 10, § 1, of the Additional Act, the crown jurist taught, quoted by the advisor: "If a provincial assembly wanted to abuse this attribution, it could, if not suppress all the judicial districts of a province, at least reduce them to one". And both of them problematized: "a complete suppression would find a remedy in the declaration of unconstitutionality of the law since it would have rendered openly useless a constitutional prerogative of the central sphere, but since when the reduction would begin to be unconstitutional, although it is visibly harmful?" Should "the two-thirds of the votes dispose of a province security?"[141].

Then, João Gomes listed several authorities "who were *the true and only advisors* of the [...] president". Some of them were mentioned in the previous articles, such as Teixeira Júnior, "venerated and illustrated state councilor", and Castro, "unsuspected to the opposition" since liberal[142].

The list of authorized interpreters included the conservative Samuel MacDowell, "the one quoted by the opposition as favorable to itself" in *The commissioned work*. In the report presented to the general assembly in 1886, the former minister of justice interpreted: "I follow the opinion of those who maintain that, regardless of interpretive law, the attribution of art. 10, § 1, of the Additional Act should only be understood as the right to establish territorial circumscriptions according to the common conditions in the general laws of the civil, judicial and ecclesiastical organization of the Empire"[143]. As an authorized interpreter, he limited "the exercise of the provincial legislatures attribution with the central laws of judicial organization, even in a domain of positive law". A clear conservative shade, and an interpretation closer to the anonymous understanding of the Act.

The former judge of law from the judicial district of Itajaí was enrolled as well. He defended the same interpretation as the chief of police: the abusive extinction of a judicial district offended the constitution. About the provincial law extinguishing his former judicial district, Lobão Cedro, quoted by João Gomes, argued that "having as its effect the extinction of a rich and flourishing judicial district that existed for twelve years, [this provincial law] transgresses, without doubt, the statement of art. 179, § 2, of the [...] Political Constitution, which determines that: no law will be established without public utility". Wearing Teixeira Júnior's *sun hat*, both Cedro and Gomes understood that "it was the president's rigorous duty to oppose the enforcement of the law, as well as to affect

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139 *Gazeta Paranaense*, Curitiba, September 19th, 1888, p. 2.

140 *Anais do senado do Império*, session of September 10th, 1888, p. 55.

141 José Antônio Pimenta Bueno, *Direito publico brasileiro...*, *op. cit.*, p. 168 *apud Gazeta Paranaense*, Curitiba, September 19th, 1888, p. 2.

142 *Gazeta Paranaense*, Curitiba, September 19th, 1888, p. 2.

143 Samuel Wallace MacDowell, *Relatório apresentado à Assembleia Geral Legislativa...*, *op. cit.*, p. 92 *apud Gazeta Paranaense, Curitiba, September 19th, 1888, p. 2.*

the act of the [provincial] legislature to the final decision of the central legislative branch" because, "as a kind of court of second or higher instance, the general assembly has the right to revoke the act of the provincial assembly once the central branch verified that it offended the Constitution of the Empire, according to art. 20th combined with 16th of the Additional Act"[144].

After appealing to so many authorities, the anonymous argued with sarcasm, "all this is certainly nonsense for the opposition, which, here and in Rio de Janeiro, has already raised the war banner to the government with the *Federalism* ticket to form a new, liberal ministry". Citing abuses committed by liberals when in government, even against the letter of the Additional Act, João Gomes quipped, "these are the gentlemen *sans peur et sans reproche* of the sacred autonomy of the provincial assemblies". Despite the inconsistencies, if the opposition wanted to take advantage of the federative ideal spreading across the country, it was "in its right". However, the liberals should not "adulterate the facts, interpreting in a political way an act of the provincial government which backed only on the understanding, legitimate for the president, of the law, and on the effort to save the independence of the judiciary, which he considered threatened by the precedent" of the provincial assembly[145].

## IV. FROM PARANÁ TO BRAZIL: AN INTERPRETIVE NOVEL

The *The government and the opposition* contains direct reference to 22 historical sources. Those classified as *interpreters' discourse* are composed of the interpreters, especially jurists, enunciations upon positive law, while those bearing the *sources discourse* label are composed of the enunciations of the legal system authorities[146]. In both cases, there is an interpretive activity, but only in the second it generates new positive law enunciations. Although the interpreter's metalanguage may be full of authority and even guide other interpreters or the legal system authorities, it is only a respectable opinion incapable of generating a mandatory bond. The sources classified as *facts* are pieces of information, and so do not belong to the set of legal interpretation. This distinction may be represented according to *Table 1*.

Now the anonymous articles can be grasped through a new prism: the predominance of the interpreters' discourse sources. As it seems crystal clear, an analysis focused on a *prima facie* understanding of the sources discourse enunciations would not only neglect the different semantic and pragmatic possible meanings of these enunciations, but also miss the significant dimension of authorized interpretations, without which one cannot understand the chapter, let alone the novel of interpretation of the Additional Act. Through propaganda editorials, João Gomes allows to glimpse not a textualist constitutionalism, but one in which the interpretive dimension, the different discourses on constitutional enunciations, and the political dispute fought in the instances of public opinion acquire undeniable relevance.

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[144] Ernesto P. Lobão Cedro, *A extinção da comarca de Itajaí sob o ponto de vista jurídico*, *O Direito: revista mensal de Legislação, Doutrina e Jurisprudência*, v. 22, May / Aug. 1880, pp. 460 and 461, respectively *apud Gazeta Paranaense,* Curitiba, September 19th, 1888, p. 2.

[145] *Gazeta Paranaense*, Curitiba, September 19th, 1888, p. 2.

[146] Hans Kelsen, *Teoria pura do direito,* São Paulo, Martins Fontes, 2006, pp. 387-397.

| | **Quantity** | **%** |
|---|---|---|
| Interpreters' discourse | 13 | 59.1 |
| Sources' discourse | 7[147] | 31.8 |
| Facts | 2[148] | 9.1 |

*Table 1* – Classification of sources cited in *The government and the opposition*.

Within the subset of the interpreters' discourse sources, it is possible to make new relevant distinctions, and represent them according to *Table 2*.

| | **Quantity** | **%** |
|---|---|---|
| Parliamentary speeches | 5[149] | 38.5 |
| Books | 4[150] | 30.8 |
| Periodicals | 3[151] | 23 |
| Executive acts | 1[152] | 7.7 |

*Table 2* – Classification of the interpreters' discourse sources cited in *The government and the opposition*.

[147] The sources of positive law are: 1. Additional Act (1834); 2. Constitution of the Empire (1824); 3. The Criminal Procedure Code (1832); 4. Law nº 40 of October 3rd, 1834; 5. Decree of December 9th, 1835; 6. Interpretation Law of 1840; 7. Provincial law nº 861 of February 4, 1880 (Santa Catarina).

[148] The factual sources consist of newspaper news: 1. Extinção de Comarca, *Dezenove de Dezembro*, Curitiba, August 14th, 1888, p. 2; 2. Telegrama, *Jornal do Commercio*, Rio de Janeiro, September 2nd, 1888, p. 1.

[149] The parliamentary speeches are available at: 1. *Anais do senado do Império*, session of June 19th,1880, pp. 220-224; 2. *Anais do senado do Império*, session of August 31st, 1880, pp. 414-417; 3. *Anais da câmara dos deputados*, session of September 3rd, 1888, pp. 12-14; 4. *Anais do senado do Império*, session of September 4th, 1888, p. 23-27; 5. *Anais do senado do Império*, session of September 10th, 1888, p. 49-55.

[150] The books cited are: 1. José Antônio Pimenta Bueno, *Direito publico brasileiro...*, *op. cit.*; 2. Vicente Pereira do Rego, *Elementos de direito administrativo...*, *op. cit.*; 3. Visconde do Uruguai, *Estudos práticos...*, *op. cit.*; 4. Pedro Antônio Ferreira Vianna, *Consolidação das disposições...*, *op. cit.*

[151] In the *periodicals* entry, two articles from *O Direito* and one from the provincial press were collected: 1. A obra encomendada, *Dezenove de Dezembro*, Curitiba, September 12th, 1888, p. 1; 2. Olegário Herculano de Aquino Castro, *Reforma Judiciaria*, *op. cit.*; 3. Ernesto P. Lobão Cedro, *A extinção da comarca de Itajaí...*, *op. cit.*

[152] As seen, the interpretation of ministers of state was invoked as a source of authority by the public discussion: 1. Samuel Wallace MacDowell, *Relatório apresentado à Assembleia Geral...*, *op. cit.*

From bottom to top, the first kind of interpreters' discourse consists of the report presented to the general assembly by Samuel MacDowell, a former minister of justice. The chief of police includes this reference in *The government and the opposition IV* in response to *The commissioned work*, in which the *Dezenove*, unsuspected since liberal, recognizes the authority of the ministry in matters of constitutional interpretation. The second entry represents periodical texts, including the Paraná press, which shows the proximity between doctrine and public discussion[153]. The quantitative similarity between books and parliamentary speeches is deceptive, and it would be a real mistake to equate them in importance in João Gomes' arguments. In the first article of the series *The government and the opposition*, the alleged excerpt from Pereira do Rego actually belongs to Pimenta Bueno, so that, in fact, only three books were used. Ferreira Vianna's, besides, deserved an almost irrelevant quote: the anonymous only mentions it in response to *The commissioned work*, in which the minister of justice was invoked as an interpretive authority.

Last but not least, the parliamentary speeches are the most important kind of source of the interpreters' discourse, at least in *The government and the opposition*. Perhaps João Gomes' editorials were symptomatic not only of Brazilian law, but also of 19th-century liberal constitutionalism, in which, theoretically, parliament was the center of constitutional authority in many legal systems[154]. None of the legislative references consisted of deliberation by the general assembly. On the contrary, they were limited to interpretations of the law supported by respectable speakers, in a ground of high constitutional authority: the supreme instance of public opinion. Without deliberation capable of generating positive law, the referenced speeches where an interesting kind of interpreters' discourse.

The predominant use of parliamentary discussion to build the bridge from the provincial to the central sphere is justified both by the historical relevance and by the dialogical nature of these sources. *The government and the opposition* represent a specific interpretive tone: that of a conservative magistrate in dispute with a provincial legislature which sought to retaliate against a judge of law, and one who was protected by the Correia-Nácar clan, to which João Gomes owed political favors. To overturn this bias, it is useful to use sources marked by political and interpretive dispute, in order to bring to light other points of view. The discussion of the provincial press allowed to glimpse the existing interpretive spectrum, but legislative debates reveal it with greater refinement, ensuring a more complex and nuanced portrait of the interpretive novel of the Additional Act. Although they contain only part of the many voices and meanings in force regarding the interpretation of the Act, the legislative sessions allow the reconstruction of the interpretive scheme guidelines, as well as of some individual nuances, and of very curious contradictions.

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[153] Judá Leão Lobo and Sérgio Said Staut Júnior, *Discussão pública e formação da cultura jurídica: contribuição metodológica à história do direito brasileira*, Quaestio Iuris, v. 8, n. 3, pp. 1688-1710, 2015.

[154] Maurizio Fioravanti, *Costituzionalismo: percorsi della storia e tendenze attuali*, Bari, Laterza, 2009, pp. 34-47.

### 4.1. Guidelines and nuances: a historical interpretive issue

The first parliamentary source to be analyzed allows apprehending the general pattern of the interpretive novel, guided by partisan understandings of the Additional Act. Even if it appeared many times so far, this pattern acquires a peculiar clarity in the first document chosen to construct the path from the particular to the general: it illustrates the link between party guidelines and different conceptions of justice, and so reveals the valuative background on which the dispute for the Act developed.

In the first editorial of *The government and the opposition*, João Gomes appealed to the authority of the Viscount of Bom Retiro in a speech given in response to senator Correia, from the Correia-Nácar clan. While the second interpreted the constitution in a restrictive sense to limit the sphere of action of the provincial assemblies, the first did it in an expansive sense to broaden it. In defense of his cause, the chief of police sought to justify Balbino da Cunha's veto against the provincial law suppressing the post of general director of public education. As known, Gomes use to manipulate the sources, and so he forced the liberal to hold conservative opinions by taking a stretch out of context, when Bom Retiro resumed Correia's arguments to answer them. With the argumentative strategy, he bequeathed the most emblematic evidence of the dispute for the Additional Act, in which the party guidelines are opposed by two high imperial officers, both senators and with a seat on the council of state.

The discussion was about "the project of the provincial assembly of Rio de Janeiro authorizing the concession of the reform improvement" to a police officer. It did not seem "in line with the doctrine of the Additional Act", according to Correia. Interpreting art. 10, § 11[155], the senator maintained that "the provincial assemblies are only responsible for legislating on the cases and how the presidents [...] can appoint, suspend and even dismiss the provincial employees". The application of these provincial laws to specific cases belonged to "the president of the province". The bill under discussion would not be "by the principles I have just outlined" as it is not "a general measure, establishing the cases and how the president of the province may appoint, suspend, dismiss, retire provincial officials", but "a special measure favorable to one of these officials". For usurping an executive attribution, Correia sentenced, "in this part, I believe that the provincial assembly lacks competence"[156].

Diverging from this restrictive understanding, the liberal Uchôa Cavalcanti defended the legislature of Rio de Janeiro with an *a contrario* argument: "it did not retire, it authorized the provincial president to retire". Disagreeing with this "doctrine invoked by the committee of the legislative assembly of Rio de Janeiro [as well]", the conservative replied, "the true constitutional doctrine was upheld by the president [of Rio], who recognizes the competence of the provincial assembly to regulate the reform of police force officers, but not to apply the law to the occurring cases". The provincial legislature, on the other hand, understood that, "just as it can legislate in general about the cases and mode of reform of

[155] Additional Act of 1834: "Art. 10. It is incumbent upon the same Assemblies to legislate: [...] § 11. Regarding the cases and the way the Presidents of the Provinces may appoint, suspend and even dismiss the provincial employees".

[156] *Anais do senado do Império*, session of August 31st, 1880, p. 414.

police officers, it can also legislate about special cases, and even about improving the reform of a given officer". Perhaps it was possible to dispute this prerogative in favor of the provincial assemblies, Correia mocked, if "there was no statement in the Additional Act that contradicted this opinion"[157].

Instigated by the provocation, the same liberal senator questioned, "which is this enunciation that would contradict [the liberal understanding]?" Cavalcanti did not find it in the Act, since it was not a question of "application of the law", but of "dispensation by law". From his interpretive point of view, Correia insisted that "it is a matter of application in a special case". In recognizing the insufficiency of the law, he continued, the provincial assembly should "enact another one establishing the new rules that it deemed necessary to be applicable not only to the officer concerned, but also to all provincial employees who are in the same circumstances". At this point, the liberal Leão Velloso entered the discussion by adopting an *a fortiori* argument to fight the conservative opponent: whoever can do more by legislating for all cases, can also do less through dispensation by law on the previous laws for individual cases considering reasons of equity, since "the special is included in the general prerogative". "This is precisely the point of divergence", pondered Correia, and accused the liberal understanding of "confusion between legislative and executive functions"[158].

In defense of doing dispensation by law, Leão Velloso resorted to an analogy: the provincial legislatures could legislate on particular cases "concerning provincial officers, as well as the central legislative branch concerning general ones". This attribution could not be contested because "every day we are legislating, authorizing the government to retire" in particular cases. To this, Correia objected, "the assembly's prerogative is broadened and the president's is nullified, however both of them sit in the same provision of the Additional Act". According to the liberal understanding, he argued, "the task that the constituent legislator gave to the presidents disappears, passes to the provincial assembly whenever it wants to call it to itself"[159]. The Liberal Party would be wrong for making possible the discretion of the regional legislatures, feared for tending to expand its prerogatives and favor factions. "If the official retired by the president in the form of the law has the good graces of the assembly, there will be a vote for a law favoring him", Correia exemplified. Finally, the conservative authority sentenced, "the way [...] to better serve the provincial service is to vote on new measures advised by equity, applicable to all similar cases", which is why the legislature of Rio would have exceeded "its powers by legislating for individual cases"[160].

Although contested, the conservative pontiff's speech passed unharmed by the attack of the liberal opposition. It found a strong objection, however, in the Viscount of Bom Retiro speech, whose authority can be noticed by the absence of any interruption, except for those of support of the auditorium, captured by the shorthand writer.

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[157] *Anais do senado do Império*, session of August 31st, 1880, pp. 414-415.

[158] *Anais do senado do Império*, session of August 31st, 1880, pp. 414-415.

[159] *Anais do senado do Império*, session of August 31st, 1880, pp. 414-415.

[160] *Anais do senado do Império*, session of August 31st, 1880, pp. 415-416.

Taking the floor, the liberal stressed the "much respect that I have for the lights of my noble friend, Mr. senator from the province of Paraná, whose authority, mainly in such matters, nobody but recognizes and appreciates". However, Bom Retiro differed "as to how to face the project [under discussion] and to understand the Additional Act in the part that concerns it". He started by agreeing "that provincial assemblies should provide for retirement or reform [...] establishing general rules, or rather regulating the cases and how presidents retire or reform [the police officers]". The permanent retirement or reform, besides, was not found in the letter of art. 10, § 11, of the Act, but was "implicitly included in the prerogative of legislating on the appointment, suspension and dismissal" of provincial employees. The assemblies should not enforce such acts "on their own initiative and special law" because "they would invade administrative attributions". If a provincial legislature has determined retirement or reform, "its act would be with all the foundation considered, by me at least, as irregular or rather unconstitutional"[161].

As Bom Retiro understood, however, the Rio de Janeiro assembly had proceeded differently. "Given the special circumstances favorable to the retired person" and convinced "of the justice of the reform improvement", the provincial legislature would not have ordered it to the president, but, conversely, would have deliberated "to authorize the presidency to enforce it". With this procedure, the legislature would not have exceeded "the limits of its legislative authority", since it is not a question of "categorically decreeing the reform or improvement to a designated individual, but of a dispensation by law", which "only can be given by those who have the power to legislate". And he continued: "if the provincial assemblies have this power in all the cases mentioned in the Additional Act, their prerogative of doing dispensation by law on the laws they make cannot be challenged" by analogy to the attribution of the general assembly. At the central legislature, there would not have been "a single legislative session in which a dispensation by law has not been promulgated to exempt [students] of preparatory exams and age for enrollment, or to grant licenses [to employees]". Thus, if parliament did so "without any objection to its competence", it would be absurd "to refuse it now to the provincial assemblies which, within constitutional limits, have the same sphere of action, the same breadth or freedom doing dispensation by law"[162].

If provincial assemblies were prohibited from resorting to equity judgments through dispensation "by law when the circumstances require so, in the cases on which they can legislate, there would be no one who could exercise this role in Brazil". By the Additional Act, the general assembly dealt with general and in no way with provincial matters, while the presidents of the province were only responsible for "enforcing the laws as they were enacted, and they do not have, nor was it possible for them to have, the authority to do dispensation by law". Then, according to the liberal understanding, the conservative one, instead of promoting formal equality, would entail absurd consequences since "the provincial employees, Brazilian citizens as are the general employees, would find themselves in worse conditions than the latter, as the former would have no one who could do dispensation by law in their favor". And the liberal struck, "that

[161] *Anais do senado do Império*, session of August 31st, de 1880, p. 416.

[162] *Anais do senado do Império*, session of August 31st, 1880, p. 417.

would imply such unequal rights between them that one should not assume that this could have been the mind of the authors of the Additional Act"[163].

Thereafter, Bom Retiro acknowledged his interpretive point of view in the discussion, and so he opened the interpretive spectrum to present some nuances. "I am very much an apologist for the institution of the provincial assemblies and, therefore, I will always try to respect the constitutional attributions delegated to such corporations", so that "I will never fail to compete with my vote to give them all the breadth possible within the sphere that have been designed to them by the Additional Act". As Correia, the liberal admitted the implicit competence of the provincial legislatures to "legislate on the retirement, jubilation, or reform of provincial employees". Diverging from the conservative, Bom Retiro accepted, as did liberals, the prerogative "of doing dispensation by law on the laws enacted by the assemblies when the circumstances justify exemptions. And I will go even further", he tinted, "separating myself from the opinion of notable men from both political parties and following the understanding of the eminent publicist Viscount of Uruguai [...]". In addition to the mentioned prerogatives, he understood, the provincial assemblies would also have the one to "approve pecuniary remunerations granted by the president for merely, but extraordinary and extremely relevant provincial services, as it occurs to such services in the central sphere of the State"[164]. The conservative Uruguai did hold the same understanding[165].

While Correia supported the president of Rio de Janeiro for having suspended the enforcement of the law as unconstitutional, Bom Retiro defended the autonomy of the legislature. This position in favor of one or another provincial branch was characteristic of the party guidelines. A strong arm of the central government in the provinces, the presidents were seen by the conservatives as a guarantee of formal equality against the casuistry of the provincial assemblies, which supposedly tended to overstep their attributions and to break the bonds of the union. The provincial assemblies were considered by the liberals as a sanctuary for regional autonomy against the center's iron circle, that is, one of the few guarantees of a pluralistic, equitable justice geared to regional interests and needs. Impaired by individual laws, the justice defended by Correia was anchored in legal security, and ensured, in the discussed case, by formal equality: the same rules to all similar cases. Bom Retiro was based on another conception of justice, anchored in equity, in valuing the particular aspects of each case. Adding values to the institutions, the conservatives interpreted expansively the prerogatives of the presidents and restrictively those of the provincial assemblies, while the liberals reversed the interpretive game. They strengthened the legislature elected by the provinces and weakened the provincial executive appointed by the ministry. Without prejudice to individual nuances,

[163] *Anais do senado do Império*, session of August 31st, 1880, p. 417.

[164] *Anais do senado do Império*, session of August 31st, 1880, p. 417.

[165] "Once the division of general and provincial services was established, as established by the additional act, a purely provincial service, as declared by the additional act, cannot be considered as a service to the State, given its nature and scope. [...] The purely provincial services are now under the exclusive responsibility of the Assemblies and provincial authorities. They exclusively organize, inspect and pay them. If there is any pecuniary reward for these services, who will be able to better assess, where can the reward come from, if not from the coffers under which they are in charge?" (Visconde do Uruguai, *Estudos práticos...*, *op. cit.*, v. II, p. 74).

party guidelines were consistent not with the kind of interpretation applied to the Act, but with the values guiding the ascription of meaning.

The same interpretive patterns constitute another parliamentary source cited by João Gomes, except for two differences. The first is that the mentioned values no longer appear explicitly, and the second is that, instead of the liberal shade of Bom Retiro, the conservative shade of the future Viscount of Cruzeiro is revealed.

Referenced in *The government and the opposition II* and *IV*, Teixeira Júnior's speech in the senate on June 19th, 1880, referred to the first mention of the case of the judicial district of Itajaí on May 24th. In this session, there was a controversy about the balance between provincial legislative and executive branches, especially around art. 15th of the Additional Act[166]. In the context of a liberal situation and conservative opposition, the minister of justice analyzed the provincial legislative process in the light of the scandal occurred in Santa Catarina, and asked his opponents of the senate: "what remedy can we use against this abusive way [of understanding the Act]?" To which Correia answered with another question, "Your Honor, do you understand that the way in which the provincial assembly acted was unconstitutional?" And the liberal Dantas clarified with a new query, "what can exist besides the non-sanction of the law of the provincial assembly which extinguishes a judicial district, if that assembly proceeds abusively?" Raised the question, a liberal interpreted, "if the law is adopted by two-thirds, the president can do nothing but sanction it". The minister agreed: "precisely; and what shall we do then?"[167].

As Teixeira Júnior protested against the liberal understanding, Dantas accused him of "having not grasped, in this hypothesis, what art. 15th of the Additional Act means". According to the norm, the minister continued, "when a law is not sanctioned and it returns to the provincial assembly, and later the two-thirds sends it back to the president, [he] must sanction it". Although art. 19 authorized the refusal by the presidency, when "the provincial assembly will have the law published"[168], the liberal interpreter insisted on his party understanding, according to which the president would be obliged to sign the provincial law returned by two-thirds. Subjecting the presidency to the qualified majority of the assemblies, this interpretation, if it did not cancel, at least it made the authorization of art. 19 an extreme resource against the resistance of the presidents. As member of the conservative opposition, Teixeira Júnior disagreed, and understood art. 19 as a provincial executive's faculty not to contribute to a

[166] Additional Act of 1834: "Art. 15. If the President deems that he must deny the sanction, as he understands that the Law or Resolution does not suit the interests of the Province, he will do so by this formula « Return to the Provincial Legislative Assembly », explaining under his signature the reasons on which it was founded. In this case, the Project will be submitted to a new discussion; and if it is adopted as is, or modified in the sense of the reasons given by the President, by two-thirds of the votes of the members of the Assembly, it will be forwarded to the President of the Province, who will sanction him. If it is not adopted, it cannot be proposed again in the same session".

[167] *Anais do senado do Império*, session of May 24th, 1880, p. 177.

[168] Additional Act of 1834: "Art. 19. The President will give or deny the sanction, within ten days, and if he does not, it will be understood that he gave it. In this case, and when, having been sent him back the Law, as determined in art. 15, he refuses to sanction it, the Provincial Legislative Assembly will have the law published with this declaration; then, signed by the President of the same Assembly".

law that the president considered abusive or exorbitant. “Forgive me; no Sir; Your Honor is not right”, dissented the minister of justice. He resorted to a supposed spirit of the Act, according to which the president would be obliged to sanction the law returned by the two-thirds. “Not supported; a sanction is a free act”, objected Correia[169].

Opposed to the liberal, the conservative understanding that ensured the executive’s independence towards the provincial assembly would be better exposed by Teixeira Júnior in the session of June 19th. Returning to the “constitutional issue”, the future Viscount of Cruzeiro reconstructed the opponent’s argument: “the noble minister of justice [...] maintained that, although the president had denied sanction to the [...] project [...], he was nevertheless obliged to sanction that same project since it was sent back [...] because, in that case, the sanction is mandatory”. Feeling sorry for “diverging from the authorized opinion of the noble minister”, the senator from Rio understood not only that the “art. 19 of the Additional Act admits the possibility that the president refuses the sanction even in the case of art. 15”, but also that “article 16 of the same Additional Act[170], as well as art. 7 of the Interpretation Law of 1840[171], established hypotheses in which the president is obliged to deny sanction and even to suspend the enforcement of the law when promulgated by the assembly in the form of art. 19th”. According to the first part of the argument, “the sanction is a free act, even if the bill is returned to the president in the form of the aforementioned article”. He agreed with “the argument of the noble senator from Paraná, who I accompany in the intelligence he ascribes to that enunciation of the Additional Act”[172].

Diverging from Correia, however, he advanced a nuance in the conservative understanding, and upheld “that the president of the province would have better consulted the interests he was watching over if, instead of enforcing this law, he had suspended its publication”. Backed on art. 24, § 3, of the Additional Act[173], this suspension would be according to the principle that no law should be enacted without public utility, as stated in art. 179, II, of the Charter[174]. As this precept was not observed in the case of the judicial district of Itajaí, the law of

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[169] *Anais do senado do Império*, session of May 24th, 1880, pp. 177-178.

[170] Additional Act of 1834: Art. 16. When, however, the President denies the sanction, as he understands that the Project offends the rights of some other Province, in the cases declared in § 8 of art. 10; or the Treaties made with Foreign Actions; and the Provincial Assembly judges the opposite, by two-thirds of the votes, as in the preceding article will be the Project, with the reasons alleged by the President of the Province, brought up to the attention of the Government and the General Assembly, for it to finally decide whether it should be sanctioned”.

[171] Additional Act Interpretation Law: “Art. 7th. Art. 16 of the Additional Act implicitly includes the case in which the President of the Province denies the Sanction to a Project when he believes that it offends the Constitution of the Empire”.

[172] *Anais do senado do Império*, session of June 19th, 1880, pp. 221-222.

[173] Additional Act of 1834: “Art. 24. In addition to the duties, which by law are incumbent upon the Presidents of the Provinces, they are also responsible for: [...] § 3º Suspending the publication of the Provincial Laws, in the cases, and in the manner marked in arts. 15 and 16”.

[174] Political Constitution of the Empire: “Art. 179. The inviolability of Civil, and Political Rights of Brazilian Citizens, which is based on freedom, individual security, and property, is guaranteed by the Constitution of the Empire, as follows: [...] II. No Law will be established without public utility”.

Santa Catarina "should be considered unconstitutional". Minister Dantas disagreed: "it is a *sun hat* that covers everything"[175]. The conservative shade of Teixeira Júnior, embraced by João Gomes, left a large margin for delegates from the general government in the provinces. Presidents would be capable of suspending any provincial law not considered of public utility. Against the adoption of this thesis by the adviser of Balbino da Cunha, the protest of the *Dezenove de Dezembro* complemented Dantas' aside: "in what iron circle does the overblown ambition of Your Honor's friends wants to compress and limit the competence of the provincial legislature?"[176]

In the discussion on the case of the judicial district of Itajaí, in summary, the minister of justice understood art. 15 of the Additional Act in a way that the presidents of province were constrained to a mandatory sanction after the overthrow of the veto by the two-thirds of the provincial assembly. Thus, if he did not annul, at least he neglected part of the enunciations of arts. 16 and 19. Diverging from this liberal understanding, the conservatives Correia and Teixeira Júnior interpreted art. 15 so that the presidency was free to sanction or not the provincial law in case of overthrow. Both of them emphasized the established in arts. 16 and 19. In the field of centralist doctrine, besides, the future Viscount of Cruzeiro opened an interpretive nuance. In addition to Correia's moderate intelligence, the senator from Rio de Janeiro argued that presidents were not only free to sanction or not returned laws, but also obliged to suspend them when unconstitutional, based on arts. 16 and 24, § 3, of the Additional Act, combined with art. 7 of the Interpretation Law. By constraining presidents to mandatory sanction after the two-thirds of the provincial assemblies, the liberals strengthened the regional legislatures, and prevented them from being constrained by the delegates of the central executive. By guaranteeing them the faculty of not competing with provincial laws considered inconvenient, the conservatives reinforced the presidents' prerogative of sanctioning. According to extreme centralist nuances, besides, the president should interfere in the regional autonomy when the provincial legislature abused of its prerogatives, and suspend the enforcement of laws when unconstitutional.

The same interpretive novel runs through the case of the judicial district of S. José dos Pinhais. The varied sources cited by João Gomes allow adding different nuances to the interpretive spectrum, mainly because it involves not only the dispute for the meaning of the Additional Act, but also the movement for greater autonomy of the judiciary.

By returning the administration of justice to the sphere of central competence, the Interpretation Law created an inconsistency that was still felt at the end of the Empire, as evidenced by the senate session of September 10th, 1888, cited in *The government and the opposition IV*. Admitting "that the provincial assemblies have abused of the prerogative of creating terms and judicial districts on a large scale", the Viscount of Ouro Preto exposed a problematic division of competences between center and provinces: "We all agree [...] that such a state of affairs cannot continue, because, after all, these excesses are weighing on the central sphere coffers, giving rise to the anomaly of the provincial legislatures

[175] *Anais do senado do Império*, sessão em 19 de junho de 1880, p. 222.

[176] *Dezenove de Dezembro*, Curitiba, September 1st, 1888, p. 1.

influencing in general expenditure": the assemblies created judicial districts provided and funded by the center. The parties agreed on the existence of the problem. One solution, however, gave rise to disagreement.

The senator from Minas Gerais illustrated this point by opening the interpretive range: "there are those who claim that the general assembly is in its right denying funds for the terms and judicial districts", while "others go to the extreme proposition of suppression of the attribution conferred by the Additional Act to the provincial assemblies". In addition to these conservative interpretations, "a third understands that, by national law, it is necessary to establish the patterns for terms and judicial districts, to which the provincial assemblies must be bound", as understood Olegário de Castro. To the liberal, "all these suggestions" seemed unacceptable. He did not see "remedy for the evil but in the reestablishment of the doctrine of the Additional Act, that is, to create the assemblies as many terms and counties as they deem necessary, but at the expense of the provincial coffers". In other words, he suggested to return the first instance of the judiciary to the provincial service[177], as before the Interpretation Law.

Applying the guideline to the case of the judicial district of S. José, Ouro Preto interpreted art. 10, § 1, of the Additional Act[178]: "if the civil and judicial division [...] belong to the provincial assemblies, the suppression of a judicial district may be sloppy, inconvenient, contrary to the public interest, but never unconstitutional"[179]. Alves de Araújo upheld a similar understanding: "Who can, Mr. president, prevent a province from presenting a 2/3 majority in the provincial assembly, and approve the bills returned by the presidents"? And he struck: "Is it in the powers of this president to suspend the enforcement of a regular law grounded on a sophistry that will not find anyone to support it in this house?"[180] In the light of a liberal interpretive point, the attribution of the provincial assemblies to legislate on the judicial division was unlimited, according to a textualist understanding of the Act: "But is the express letter of the constitution unconstitutional?" The sarcastic question belonged to a liberal senator[181].

João Gomes, on the other hand, maintained a restrictive interpretation on the legislative prerogative, and an expansive one on the president's as to interfere into provincial autonomy. Under the terms of art. 16 of the Additional Act[182], he advised the suspension of the provincial law enforcement, and the sending of the legislative act extinguishing the judicial district of S. José to the general

[177] *Anais do senado do Império*, session of September 10th, 1888, p. 52.

[178] Additional Act of 1834: "Art. 10. It is incumbent upon the same Assemblies to legislate: § 1 On the civil, judiciary, and ecclesiastical division of the respective Province, and even on the transfer of its Capital to the place that most suits them".

[179] *Anais do senado do Império*, session of September 10th, 1888, p. 50.

[180] *Anais da câmara dos deputados*, session of September 5th, 1888, p. 63.

[181] *Anais do senado do Império*, session of September 5th, 1888, p. 32.

[182] Additional Act of 1834: Art. 16. When, however, the President denies the sanction, as he understands that the Project offends the rights of some other Province, in the cases declared in § 8 of art. 10; or the Treaties made with Foreign Actions; and the Provincial Assembly judges the opposite, by two-thirds of the votes, as in the preceding article will be the Project, with the reasons alleged by the President of the Province, brought up to the attention of the Government and the General Assembly, for it to finally decide whether it should be sanctioned".

assembly, in order to avoid the two-thirds of the assembly. He did it to protect Faria Sobrinho, from the Correia-Nácar clan, but it would be a real mistake to see only local interest in the case. The magistrate justified the measure by adopting interpretive standards linked not only to the conservative school but also to the movement for autonomy and independence of the judiciary. Filling the national issue with provincial strength relations, Gomes upheld a very restrictive, far-conservative shade of the attribution of legislating on the judicial division. In addition to re-enacting the national novel in a curious provincial case, the advisor's arguments refer to sources allowing to outline a more complex profile of this peculiar interpretive construction. The chief of police's passion for quoting as many authorities as possible brought up nuances that tended to bring political opponents together, as well as to put away partisans.

Extensive interpretation of the legislative and a restrictive one of the executive provincial branches prerogatives,, in fact, could be the rule among liberals, but it did not apply always and in all cases. Making the appropriate inversion, the same could be said of conservatives. Future president of the Supreme Federal Court, Olegário de Castro was closer to João Gomes than to Ouro Preto, despite party affiliation. Both Gomes and Castro belonging to the movement for autonomy and independence of the judiciary, the difference between the high liberal magistrate and the conservative advisor resided in that the former understood to be necessary a general law limiting the prerogative of the judicial division[183] so that he presented a reform project admitting the interference of the center into provincial autonomy, while the latter sustained the same understanding upheld by MacDowell. According to the ex-minister, a new law would not be necessary to constrain the provincial legislatures in the matter of judicial division because the general laws of the Empire already limited them[184]. "It is what we support", Gomes pointed out in *The government and the opposition IV*[185].

In turn, the conservative pontiff of the *Practical Studies* was closer to Ouro Preto than to Balbino da Cunha's advisor. Quoted in *The government and the opposition IV*, the Viscount of Uruguai understood that the exercise of the attribution of creating and extinguishing judicial districts, even if inconvenient or abusive, was not unconstitutional. Therefore, the delegates of the central government could not suspend and send to the general assembly provincial laws on such matter[186]. The Viscount of Uruguai, in his interpretive shade, disagreed with another conservative interpreter: the author of *Direito public brasileiro*, who admitted unconstitutional laws in the matter. Disagreeing with the interpretation supported by Ouro Preto and Uruguai, the Marquis of S. Vicente justified his far-conservative nuance with a *reductio ad absurdum*: "If a provincial assembly wanted to abuse this attribution, it could, if not suppress all the judicial districts of a province, at least reduce them to one, what would be equivalent to frustrating the administration of justice [...]; might that be a regular principle?" Pimenta Bueno then pondered: "the reduction [of judicial districts] since when will start to

[183] Olegário Herculano de Aquino Castro, *Reforma Judiciaria*, *op. cit.*, p. 173.

[184] Samuel Wallace MacDowell, *Relatório apresentado à Assembleia Geral Legislativa*, *op. cit.*, p. 92.

[185] *Gazeta Paranaense*, Curitiba, September 19th, 1888, p. 2.

[186] Visconde do Uruguai, *Estudos práticos...*, *op. cit.*, v. I, pp. 179-180.

be unconstitutional [...]? Should the two-thirds of votes dispose in this way of the security of a province?"[187].

Defenders of the central executive, as a rule, conservatives tended to restrict the prerogatives of the provincial assemblies, as well as to expand the ability of the presidents to intervene in the autonomy of their provinces. They were delegates of the central executive, and so should be guarantors of legal security against the casuistry of the provincial legislatures. Declaring themselves supporters of the regional franchises, the liberals tended to expand the prerogatives of the provincial assemblies since they were elected by the provinces: strongholds of a conception of justice attentive to regional interests and needs. To them, equity would be seriously constrained by the centralizing iron circle. These general features of the novel are necessary, but not sufficient to grasp its complexity. Each character's interests and trajectory inserted different nuances into the interpreters' discourse. It should be possible by now to glimpse the existence of a lush, historical interpretive garden, to which the narrow window of *The government and the opposition* allows a limited, but significant view.

It seems reasonable to take chances and argue that the anonymous articles battle was fought with pre-existing interpretive patterns, consolidated over decades of dispute over the Additional Act. *The government and the opposition* consisted of a simple episode within a greater novel, a longstanding national issue of Imperial Brazil. The interpretive game referred to the constitutional ground of the Empire, settled during the period between the Additional Act and the Interpretation Law. The beginning of the interpretive issue is not within the immediate reach of the anonymous articles' quotes. It looks wise, however, to follow a clue contained in *The government and the opposition IV*, the *Estudos Práticos* of Uruguai. In the introduction of a work dedicated to the dispute for the Act, the conservative pontiff lists more than a hundred parliamentary sessions between 1831 and 1840.

The interpretation of the Additional Act was characterized early on by doubts and divergences, soon becoming a national issue for Brazilian constitutionalism. At the chamber of deputies session of June 10th, 1837, the "commission of [provincial] legislatures" proposed "a project [...] interpreting various articles of the Additional Act accordingly to the Charter". The project became the Interpretation Law of 1840. Signed by Paulino José Soares de Souza and others, the explanatory statement highlighted "the need to establish a general rule of interpretation on several articles of the Additional Act, about which doubts have occurred and a variety of interpretations has appeared". Through the prism of regressive, centralist opinion, the purpose was to eliminate "uncertainty and instability" through "certain, invariable and independent from contradictory votes understanding", capable of guiding "the assemblies and the presidents of the provinces in the proposition, discussion, adoption and sanction of provincial laws"[188]. When the bill arrived at the senate, a senator testified: "when the Additional Act was only one year old, it already offered doubts to the government that existed in 1835; it is since that time [...] that this interpretation has been constantly and successively requested"[189]. The supporters of equity and those of

[187] José Antônio Pimenta Bueno, *Direito publico brasileiro...*, *op. cit.*, p. 168.

[188] *Anais da câmara dos deputados*, session of June 10th, 1837, p. 68.

[189] *Anais do senado do Império*, session of July 9th, 1839, p. 137.

legal security could dispute the borderline between central and provincial attributions, but they agreed on the need to solve the many emerging doubts. Regarding the regressive project, Vergueiro understood it to be "in general [...] a revolution against the constitution, which is why I will oppose it, thus showing the respect that I dedicate to the Additional Act". According to the senator from São Paulo, however, it would be sensible to carry out a "general reform that would better divide the general and provincials affairs". Although recognizing "many defects" in the Act, the progressive wanted "a judicious reform" without being "as petty, as partial as this" [190].

Instead of replacing *uncertainty and instability* with *certain and invariable interpretation* of the constitution, as the parliamentary commission of 1837 intended, "the Interpretation Law of the Additional Act" had eliminated "great doubts" without removing "meticulously how many [...] could emerge". So admitted the same Paulino José Soares de Souza decades later, already Viscount of Uruguai[191]. The national interpretive issue remained, and the attempts to solve it continued. "Twenty years after the interpretation of the Additional Act (law of 1840), a new interpretation was uselessly attempted". The "Viscount of Jequitinhonha" sought to clarify several doubts[192]. After writing the *Estudos Práticos*, "Paulino José Soares de Souza, then minister of the Empire", sustained in a ministerial report that "a new interpretation is needed to resolve doubts". In 1869, "still minister, he would insist on a new interpretation, claiming that the division of competences was unclear". Then, he "presented an interpretation project. The new project, from 1869, deals with themes that, according to Uruguai, remained to entail controversies". And Miriam Dolhnikoff concludes, "from then on, all the reports of the ministers of the Empire mention the interpretation project of the Viscount of Uruguai", which has never been "voted"[193].

Discussing the case of the judicial district of S. José in 1888, João Alfredo still sought to settle the ideal of "always standing [...] in the field of principles and their inflexible logical consequences". As a conservative, the prime minister wanted the parliament to "agree on the right and invariable rules that must be adopted in this matter". To the conservative understanding, Cândido de Oliveira objected with an aside: "so come the reform" to enhance provincial autonomy, a promise of the ministry. And João Alfredo replied, "regardless of any reform, we can all interpret the Additional Act, and, [...] for doubtful points, there is the enunciation of art. 25 [of the Act][194] that [...] converts the ordinary into a constituent legislature to enact an interpretive law on these points"[195]. Certain and fixed interpretation guidelines represented the values defended by the conservatives, while the liberals sought to explore the flexible, pluralistic dimension of the Act in favor of regional autonomy. Even if a change in the Act was considered necessary among both parties, and

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[190] *Anais do senado do Império*, session of May 6th, 1840, p. 27.

[191] Visconde do Uruguai, *Estudos práticos...*, *op. cit.*, v. I, p. XXVI.

[192] Visconde do Uruguai, *Estudos práticos...*, *op. cit.*, v. I, p. XXIV.

[193] Miriam Dolhnikoff, *O pacto imperial: origens do federalismo no Brasil do século XIX*, São Paulo, Globo, 2005, pp. 241-243.

[194] Additional Act of 1834: "Art. 25. In case of doubt about the interpretation of any article in this reform, the General Legislative Branch is responsible for interpreting it".

[195] *Anais do senado do Império*, session of September 6th de 1888, p. 39.

both the reform and the interpretive law technique had been available to parliament for decades, this change never happened: there were strong disagreements about which path it should follow.

### 4.2. Incoherence and custom: constitutive features

The portrait of the constitutional novel is now clearer, yet it is worth highlighting one of its main features. The Additional Act could vary through the prism of possible meanings according to the interests at stake, despite of party guideline. The liberals could not act differently since an unwritten, social practice had recognized the central government as an interpreter of the imperial legal system.

In a session of the chamber, of September 5th, 1888, Alves de Araújo continued the speech that he had initiated at the meeting on September 3rd, the latter mentioned in *The government and the opposition III*. The representative from Oliveira e Sá and Alves de Araújo clan asked the central government to enforce the retaliation against Faria Sobrinho under the prerogative of the judicial division. Balbino da Cunha suspended the enforcement of the provincial law, and referred it to the general assembly to decide on the constitutionality of the regional act. "If the act depends on the general assembly to be kept, its provisional enforcement at least depends on the noble minister of the Empire", requested Alves de Araújo. Then he forced an interpretation against the letter of the Act, "although the general assembly is open, the noble minister [...] can order the law to be executed under the Additional Act until the general assembly decides on the case (*not supported, several voices*)". Registered by the shorthand writer, the reaction of the chamber shows that the request offended not only the Act, but also Araújo´s party guideline. "This is further exaggerating the prerogatives of the central executive branch; it is not the liberal doctrine", objected a deputy[196].

At the senate session of September 4th, 1888, cited in *The government and the opposition III*, the liberals Silveira Martins, Cândido de Oliveira and Ouro Preto criticized Cunha for suspending the enforcement of the provincial law extinguishing the judicial district of S. José. In defense of his protégé, godfather Correia brought up a case in which the government had proceeded similarly in the last liberal situation. "I do not want to recall facts, but, in view of so much contestation, I will always recall that in the last situation provincial laws were suspended even if voted by two-thirds of the provincial legislature. According to the moderate conservative, the last liberal government had upheld the act of a president suspending provincial laws based on a controversial interpretation of art. 15 of the Additional Act[197]: 'it would be required not two-thirds of the present

[196] *Anais da câmara dos deputados*, session of September 5th, 1888, p. 63.

[197] Additional Act of 1834: "Art. 15. If the President deems that he must deny the sanction, as he understands that the Law or Resolution does not suit the interests of the Province, he will do so by this formula « Return to the Provincial Legislative Assembly », explaining under his signature the reasons on which it was founded. In this case, the Project will be submitted to a new discussion; and if it is adopted as is, or modified in the sense of the reasons given by the President, by two-thirds of the votes of the members of the Assembly, it will be forwarded to the President of the Province, who will sanction him. If it is not adopted, it cannot be proposed again in the same session".

members, but of all the assembly'". Then, Ouro Preto tried to justify the act arguing that it was a "doubtful point". Correia went into greater detail: "then it is possible, on this basis, to repeat the fact happened in the province of São Paulo when laws of exclusive provincial interest had not been executed, even if voted by two-thirds of the members present at the session of the assembly?" And he added, "can the law voted by the unanimous vote of the members cease to be enforced, if that number is lower than two-thirds of the total members?"[198]

In the case recalled by the senator from Paraná, the liberals considered its interpretive dispute a *doubtful point*. In the case of the judicial district of S. José they disagreed with João Alfredo when he considered the understanding of Cunha to be an *opinion issue*, as stated in the senate session of September 10th, 1888, quoted in *The government and the opposition IV*. The prime minister recalled having invited "my illustrious opponents for us to agree on the meaning of the Additional Act, because it is constantly put in doubt". Ouro Preto criticized such invitation as "a provocation [...] freely addressed by the noble prime minister to his opponents"[199]. The evidence goes back to the session of the senate held on September 6th, during which João Alfredo spoke in defense of the President of Paraná. "I will enter into a transaction with the liberal opposition and I will estimate that we agree with the right and fixed principles by which the noble opposition interprets the Additional Act, because, I confess, whenever I hear discussions of this kind I do not know what the liberal doctrine is". And a liberal senator responded, "it is the Additional Act's"[200].

Justifying his proposition, João Alfredo gave examples of the interpretive inconsistency among liberals. The first dealt with the verification of powers of the elected members, "attribution of more restricted and more private competence to the provincial assemblies". Depending on the strength relations and interests at stake, however, "sometimes the government is asked to interfere into the verification of powers of the assemblies in a certain sense; [and in] others it is accused of interfering into the matter by not allowing the assembly to be constituted according to their own judgment". As for the prerogative of the judicial division, the conservative from Pernambuco listed more cases. "One day we see in force the [interpretive] principle according to which provincial assemblies have the full prerogative to create judicial districts", the next day another understanding holds sway over liberals: "the general assembly has the faculty to prevent the act of the provincial legislatures". "No liberal supported this doctrine", protested Ouro Preto. And the head of the ministry replied, "to deny [budgetary] means is as much as to prevent the consequences of the act that the provincial assembly competently practices"[201]. In a rhetorical question, João Alfredo asked, "why does not the general

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198 *Anais do senado do Império*, session of September 4th, 1888, p. 26.

199 *Anais do senado do Império*, session of September 10th, 1888, pp. 53 and 51, respectively.

200 *Anais do senado do Império*, session of September 6th, 1888, p. 37.

201 He referred to the parliamentary precedent based on "[budgetary] law n. 2940 of October 31st, 1879, fixing the expenditure and budgeting the Empire's revenue for the years from 1879 to 1881", as witnessed Olegário de Castro, quoted in *The government and the opposition IV*. According to the high magistrate, "by virtue of art. 3, § 2, of the aforementioned law, to which was immediately given the status of permanent, the proposal of the executive branch fixing the expense in the part concerning the ministry of justice must contain funds under the title new terms and judicial districts", so that, "before voting on the credit necessary for the expenditure on personnel in the aforementioned terms and judicial districts, they will not be classified or provided

legislative branch vote on the funds necessary to provide the judicial districts that the provincial assemblies have created in the exercise of their constitutional attribution?" As to close the question, he expounded, "to deny funds for the provision of judicial districts is as much as to cancel an attribution of the provincial assembly". "It's true", agreed Ouro Preto. And the conservative revealed the trap, "however, the noble senators who defend so much the provincial assemblies refuse the [budgetary] means. (*Several asides are exchanged*)"[202].

The liberal understanding would also vary in another aspect of the interpretation of art. 10, § 1, of the Act[203]. In the words of prime minister, "the provincial assembly brings together three or four judicial districts" in order to offend "the constitutional right of lifelong officials, who should be kept in their places". Paying homage to such a measure, "a liberal minister comes to say that the old judicial districts are as if they have never existed, so that the judges of law in charge disappear, and others must be appointed". And the conservative from Pernambuco quipped, "such is the respect for the attributions conferred by the Additional Act to the provincial assemblies". At the same time, however, the old liberal situation had established the interpretation that, by the same constitutional precept, "the suppression of the offices of justice does not harm the civil public officer occupying them for a lifelong title". Well, "if the civil officer's right is protected", with much more reason "the magistrate's right" should be so, once covered with special, constitutional guarantees. To João Alfredo, it did not seem coherent to expand the prerogative of the provincial legislature over the rights of judges of law, while restricting it in the case of less important officers. "I see this confusion in the principles supported by the liberal school", he censored, "about which I would like to reach an agreement so that they become fixed, certain, and well known. (*Asides*)"[204].

It was common to see "varying the doctrine related to cases to which the same reason is logically applicable". The strength relations use to create a situation in which "each day the decisions on the same matter are so contradictory that they seem to obey the interests of the moment rather than the logical spirit that should always guide us in the interpretation of the laws", lamented the prime minister[205]. He imputed incoherence only to his opponents, but it remains to be ascertained if this feature was limited to the interpretive practice of the Liberal Party. As the sources make crystal clear, however, the liberals were condemned to contradict their party guideline both in the situation and in the opposition. The reason for this is not clear from the sources cited in *The government and the opposition*. To illustrate why it happened it is necessary to recur to the final word on the case of the judicial district of S. José dos Pinhais. The episode can be reconstructed from clues, mainly of the provincial press.

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with judges and public prosecutors" (Olegário Herculano de Aquino Castro, *Reforma Judiciaria*, *op. cit.*, p. 170).

[202] *Anais do senado do Império*, session of September 6th, 1888, pp. 37-38.

[203] Additional Act of 1834: "Art. 10. It is incumbent upon the same Assemblies to legislate: § 1 On the civil, judiciary, and ecclesiastical division of the respective Province, and even on the transfer of its Capital to the place that most suits them".

[204] *Anais do senado do Império*, session of September 6th, 1888, p. 37.

[205] *Anais do senado do Império*, session of September 6th, 1888, p. 39.

Shortly after the veto of the provincial law, the assembly had approved "a resolution [...] amending some articles of its bylaws", and sent it to the president for publication "on September 4th"[206]. The amendment allowed to publish provincial laws not sanctioned, even when the president raised doubts about its constitutionality in the reasons for non-sanction. At the senate session of September 10th, 1888, Ouro Preto expounded, "in telegrams of yesterday it appears that the legislature of Paraná, not complying with the reasons for non-sanction, confirmed the laws by two-thirds of the votes and published them". According to the Act[207], the veto of unconstitutionality suspended the publication of the law until final deliberation of the general assembly. However, the Ouro Preto of the parliamentary propaganda did not give much value to constitutional statements, "the [provincial] assembly was in its right; since the president of the province had no right to reject [the laws] for unconstitutionality, he could only do so if they seemed contrary to the interests of the province"[208].

In reaction, Balbino da Cunha consulted the minister of the Empire about the publication made by the provincial assembly. "We are told that Mr. minister of the Empire decided to listen to the Empire section of the council of state", warned the *Dezenove de Dezembro*[209], "about doubts raised in the application of certain articles of the Additional Act, for the government to establish the interpretation that should be observed until the legislative body resolves them by law". The central executive, as can be seen, would decide on a provincial law act already published, and in a matter of exclusive competence of the regional legislatures, that is, its bylaws. "It is said that on Saturday the Empire section of the council of state will meet to discuss [...] on matters relating to the provincial assembly of Paraná", confidently noticed the liberal organ[210].

Not without irony, the next note appeared in the conservative organ's columns: "the Empire section of the council of state, of which Mr. Viscount of Ouro Preto[211] is part, opined for the modification of some articles of the bylaws of the provincial assembly of Paraná"[212]. Based on the consultation of the council of state, the minister of the Empire declared, "in a ministerial warning addressed to His Honor Mr. Dr. president of this province, that he is authorized to suspend the publication of the reformed bylaws of the provincial assembly because there is an offensive enunciation to art. 16 of Additional Act"[213, 214]. The judicial district of S.

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[206] *Dezenove de Dezembro*, Curitiba, December 15th, 1888, p. 1.

[207] Additional Act of 1834: "Art. 24. In addition to the duties, which by law are incumbent upon the Presidents of the Provinces, they are also responsible for: [...] § 3º Suspending the publication of the Provincial Laws, in the cases, and in the manner marked in arts. 15 and 16".

[208] *Anais do senado do Império*, session of September 10th, 1888, p. 50.

[209] *Dezenove de Dezembro*, Curitiba, October 6th, 1888, p. 1.

[210] *Dezenove de Dezembro*, Curitiba, November 14th, 1888, p. 1.

[211] It should be noted that the Ouro Preto of the parliamentary propaganda was not the same as that one who served on the council of state. If in parliament he defended the Paraná assembly, in the interpretive organ he condemned it.

[212] *Gazeta Paranaense*, Curitiba, November 20th, 1888, p. 3.

[213] Additional Act of 1834: Art. 16. When, however, the President denies the sanction, as he understands that the Project offends the rights of some other Province, in the cases declared in § 8 of art. 10; or the Treaties made with Foreign Actions; and the Provincial Assembly judges the opposite, by two-thirds of the votes, as in the preceding article will be the Project, with the

José dos Pinhais remained untouched, as evidenced by an editorial from the *Dezenove de Dezembro* in which the editor addressed to the "governor of this State". Already in the republic, the liberal organ recommended the suspension and responsibility of the "judge of law of the judicial district of São José dos Pinhais, Dr. Joaquim de Almeida Faria Sobrinho". The magistrate would have "ostentatiously fixed his residence in this capital, in the house of his property on *Direita* St., and gave hearing [in São José] only on Saturdays"[215].

The legal system attributed two major interpretive prerogatives to the general assembly: that of deciding on the constitutionality of provincial laws and that of establishing the meaning of the laws or the Additional Act by an interpretive law. In neither case the parliament used them as it should, to respond to the various cases and emerging doubts. Regarding provincial legislation, Uruguai regretted that the Interpretation Law had not been complemented by the "revocation of many exorbitant provincial laws [...]". And he questioned, "the general assembly that in 16 years [...] has not revoked a single provincial law will be able, by examining, defeating, annulling law by law, to bring the country out of the legislative anarchy in which it is?". As a rhetorical question, it found an answer in the sequence: "Very unconstitutionally, the central government has suspended, nullified provincial laws sanctioned, published, dependent only on the general legislative branch". Then, he promised, "whoever reads the quotations and exhibitions that this book brings together will recognize that it is the council of state which, silently, has been working harder to set up the country and to settle the good understandings", especially about the Act[216].

Due to a constitutional custom, the central executive branch had become a recognized interpreter of the law and the constitution. Such an institutional design condemned liberals to chronic incoherence with their interpretive guideline: in the government and in the opposition. A centralized form of state has been settled around the customary interpretive prerogatives of the ministry. Even so, this paper argues that the Imperial State was neither absolute nor arbitrary. The government-interpreter could count on a respectable council not only for interpreting the law, but also for giving sound reasons to the meanings ascribed to the sources of law. As a rule, the great interpretive organ provided the ministry with interpretation and justification for the deliberations issued through an executive's source of law called *ministerial warnings*. The organ was the council of state, but that is another story.

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reasons alleged by the President of the Province, brought up to the attention of the Government and the General Assembly, for it to finally decide whether it should be sanctioned".

[214] *Gazeta Paranaense*, Curitiba, December 11th, 1888, p. 2.

[215] *Dezenove de Dezembro*, Curitiba, December 26th, 1889, p. 1.

[216] Visconde do Uruguai, *Estudos práticos...*, *op. cit.*, v. I, pp. XXVI, XXVII, XVLI and XLVII, respectively.