

CONSTITUTIONAL AMENDMENT 95 – ANALYSING ITS IMPACTS ON PUBLIC HEALTH IN THE CONTEXT OF CORONAVIRUS PANDEMIC

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Abstract. This research addresses the impacts of Constitutional Amendment 95 on the social order of the Brazilian Constitution, specially concerning public health expenses, in the context of the coronavirus pandemic. The aim was to study the political and legal phenomenon of the Amendment and its consequences to the public budget in such historical period, in which Brazilian society demands, more than ever, an efficient health system. This study was carried out by the lens of the theoretical discussions about the *commons*, by which public budget may be understood, ideally, as a resource belonging to society. The method consists primarily of a bibliographical research on Constitutional Amendment 95, followed by a documentary research, analyzing an array of government technical reports. We intended to interpret and analyze official data about the federal public budget in Brazil, from the past years and years to come, to answer the question about the consequences of the amendment on public health. We have focused on the “thematic analysis”, proposed by Minayo, by which the following steps are performed: pre-analysis (floating reading, constitution of the corpus, hypothesis formulation); material exploration (coding, classification, aggregation of data). Methodological orientation is hypothetico-deductive. The results suggest that the Brazilian public budget is controlled by financial interests commonly opposed to the interests of the public, in such a way that public power sometimes acts as a guarantor of private interests. Although there are several ways to allocate resources to face the coronavirus pandemic, the constitutional amendment certainly limits the capability of national government to provide public health.

Keywords. Public budget; health system; law of environmental commons; constitutional amendment 95; coronavirus pandemic.

Resumo. Esta pesquisa enfrenta os impactos da Emenda Constitucional 95 sobre a ordem social da Constituição Brasileira de 1988, no contexto da pandemia de Coronavírus. O objetivo foi estudar o fenômeno político e jurídico da emenda 95 e suas consequências para o orçamento público em um período histórico em que a sociedade brasileira demanda, mais do que nunca, um sistema de saúde eficiente. O estudo foi realizado sob a ótica das discussões teóricas sobre os bens comuns, pelas quais o orçamento público deve ser entendido, idealmente, como um recurso pertencente à sociedade, seja por intermédio do Estado ou não. O método consiste na pesquisa

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bibliográfica sobre a Emenda Constitucional 95, seguida de uma pesquisa documental, analisando uma série de relatórios técnicos governamentais. Pretendeu-se interpretar e analisar dados oficiais sobre o orçamento público federal no Brasil, nos últimos anos e anos, para melhor responder à pergunta sobre as consequências da Emenda 95 à saúde pública. Foi utilizada a “análise temática”, sugerida por Minayo, pela qual são executadas as seguintes etapas: análise preliminar (leitura flutuante, constituição do corpus, formulação de hipóteses); e exploração do material (codificação, classificação, agregação de dados). A orientação metodológica é hipotético-dedutiva. Os resultados sugerem que o orçamento público brasileiro é controlado por interesses financeiros comumente opostos aos interesses do público, de tal forma que o poder público às vezes atua como garantidor de interesses privados. Embora existam várias maneiras de alocar recursos para combater a pandemia de Coronavírus, a Emenda constitucional 95 certamente limita a capacidade do governo federal de prover saúde pública.

Palavras-chave: orçamento público; sistema público de saúde; direito dos bens comuns ambientais; emenda constitucional 95; pandemia de Coronavírus.

1. INTRODUCTION

Since the approval of Constitutional Amendment 95, Brazilian population has been suffering the consequences of the so-called “fiscal adjustment”. Constitution was changed in such a way that the functioning of the public budget was radically modified. Under the argument of avoiding the expansion of internal public debt, National Congress approved a “New Fiscal Regime”, which imposes mechanisms to limit/reduce social spending and investments, to prioritize expenses related to public debt repayments.

This paper has three objectives. First, describing the political and social context in which new budgetary rules were approved. Second, analyzing some of main social consequences already verifiable of Constitutional Amendment 95, focusing public health expenses, an area which is especially important in a period of coronavirus pandemic, in which society demands, more than ever, an efficient health system. Third, arguing that these consequences indicate a process of privatization of public resources; therefore, this subject can and should be understood by the lens of the common’s paradigm, to reshape problems related to the public budget, according to a renewed democratic principle.

Since the State represents the public interest, it is assumed that State decisions regarding public budget correspond to society interests. In many cases, like that of Constitutional Amendment 95 in Brazil, this reasoning is clearly false. Applying the *commons* paradigm to this subject provides an interesting conceptual tool to question the way that public budget is managed.

It should be noted that the new Fiscal Regime was conceived in a scenario of a serious fiscal crisis. However, we do not address the deeper causes of this crisis, its context, and origins. These controversial topics require a detailed exam of the public sector accounts, Brazilian

macroeconomic policies and, most of all, monetary policies developed by the Central Bank. Moreover, it would be important to make a detailed examination of many questions: a) if it is necessary to impose a limit to public expenses through the constitution; b) whether it would be in accordance with constitutional values to restrict social expenditure and not to restrict fiscal expenditure; c) whether is politically legitimate to impose limits for social expenditures for a period longer than a presidential mandate; d) which expenses should or not be included in this constraint. Thus, although the subject of great importance, such analysis is out of the scope. Instead, we propose to analyze the consequences of the Fiscal Regime already adopted, discussing its contradictions.

We developed a qualitative and exploratory research, through bibliography and documentary sources. The procedure was analyzing the content of legal norms, legal literature, journalistic texts, and technical studies of governmental departments about the Amendment. Theoretical references about the commons were consulted to enable better understanding, interpretation, and analysis of factual and institutional scenario. We focused on the “thematic analysis”, a method suggested by Minayo’s (2014, p. 207), by which the following steps are performed: pre-analysis (floating reading, constitution of the corpus, hypothesis formulation); exploration of the material (coding, classification, aggregation of data). Epistemological orientation is “hypothetico-deductive” because we tried to formulate a hypothesis based on verifiable procedures, presented as a logical reasoning which is refutable, at least at its core. Any reader is invited to present evidence capable of contradicting its central conclusions.

The paper has three correlated parts. First one (section 2) is devoted to expose the political and social circumstances by which the Amendment was approved, discussing the prospects for society if the norms were applied for 20 years. The second part (section 3) is devoted to detail the functioning of the Amendment, explaining what and how constitutional text changed. The third one (section 4) is dedicated to give a brief account of the social impacts already occurring in Brazil, as well as debating the reduction of public health financing during Coronavirus pandemic and its relation to the amendment.

These three topics were investigated by the lens of the theories about the *commons*, because we consider that a political regime cannot be truly democratic if public budget is controlled by special interests related to the finance, in detriment of the large majorities. This theoretical delimitation consists of authorial claims based on a large bibliography as framework. It is not intended to present in a systematic way all theoretical understandings about the commons, or even to deepen aspects related to these theories. Despite being guided by such theoretical framework,

we have made a genuine use of this concept to discuss the available data. However, the article is not about the commons, this is only an auxiliary notion to which we refer at the introduction and conclusion sections. The conclusions stand on their own.

Once those considerations are properly made, is important to highlight that one of the most effective criticisms of abusive private appropriation and commoditization of the commons comes from the concept of *enclosures*. This concept alludes to the “Enclosure acts” (Rosenman 2020) of English parliament and refers to the process of enclosing communal lands converting them into private properties between 17th and 20th centuries. These processes were not only violent and abusive but made possible the so-called “primitive accumulation”. The notion of primitive accumulation is in Adam Smith and the criticism to the liberal conception began with the earlier (2017) writings of Marx. From that moment on, the term was reframed: the process of violent expropriation was generalized to various spheres of life in which “enclosure” is unacceptable by ethical standards. Several prominent authors somehow address the problem of “new enclosures”, silent theft of commons, analyzing the violent and abusive appropriation of the environment, culture, knowledge and so on. Among these, Harvey (2003), Boyle (2008); Bollier (2003); Klein (2001); Neeson (2003).

Concerning institutional arrangements that lead to budgetary decisions, the public budget is a condition *sine qua non* to make viable many social and environmental human rights. However, such a valuable resource has been privately appropriated by narrow interests, even by the State, operating from specific private interests.

The approval of Constitutional Amendment 95 is one of the biggest events in Brazil, in recent years, concerning legal and political matters, but also reflecting on everyday life. Understanding the context and what is causing the precariousness of essential public services is something worthy of attention. Technicalities presented around legal discussions about the public budget cannot hide the fact that the new rules are, essentially, legal/political choices. The results of those choices are already affecting millions.

2. THE CONTEXT OF CONSTITUTIONAL AMENDMENT 95 APPROVAL: THE PROSPECT OF A 20 YEAR CRISIS

The year 2016 was politically atypical in Brazil. The period was marked by radicalization in politics. There was the impeachment of former President Dilma Rousseff. For many this event was an important measure against corruption, while for others it was a coup, carried out by the

Legislative and Judiciary Branches. The process divided public opinion and was massively reported by international press. There were street demonstrations involving millions of people, both to support and to oppose the impeachment procedure. After the impeachment, on August 31st, 2016, the presidency was assumed by Michel Temer. One of his first actions was to declare the need for a fiscal adjustment. The *Constitutional Amendment Bill* (PEC n° 241/2016) took place at the National Congress. The purpose was to amend a disposition, from a Transitory Constitutional Act (*Ato das Disposições Constitucionais Transitórias – ADCT*) still in force, to establish a New Fiscal Regime for no less than 20 years.

According to the Explanatory Memorandum (*Exposição de Motivos n° 83/2016*), this measure aimed to reverse the fiscal imbalance on public accounts. The document states that the deterioration of Federal Government's primary results would lead to a deficit of up to R\$ 170 billion. It also says that expenses related to social investments would have caused an unprecedented increase of federal public debt. According to the document, the gross government debt had gone up to 51.7% of Gross Domestic Product (GDP) in 2013 to 67.5% in April 2016 (Brazil, 2016a).

Thus, the root of fiscal problem would be the growth of so-called “primary public expenditure”; therefore, it would be mandatory to create a legal instrument aimed to curb these expenses, or, at least, its growth (Brazil 2016a). This category of expenditures refers to those that pressure primary results, altering the government's net debt (non-financial public sector). It is also known as *non-financial expenses*. It corresponds to a set of expenses that make it possible to offer public services to society. Examples of primary expenditures are personnel, costing, and investment expenditures.

The announcement of such a proposal caused great social commotion. The reasons are understood: the way to prevent the debt growth was creating a mechanism to reduce expenses of greater social interest, such as those related to investments in public health, public education, scientific and technological development, social assistance, environmental management, among others.

The concern about the Amendment's future implications was so significant that it became usual to refer it as “*PEC da morte*” (that is, “Bill of death”). At that time, some entities came to public to express their concerns about the proposal. In this sense, the National Health Council (*Conselho Nacional de Saúde*), the National Council for States Health Secretariats (*Conselho Nacional de Secretarias Estaduais de Saúde*) and the National Council for Municipal Health Secretariats (*Conselho Nacional de Secretarias Municipais de Saúde*) stated that the New Regime would impose billionaires' losses on the Unified Health System - UHS (*Sistema Único de Saúde - SUS*). According to the

National Health Council, the losses could reach R\$ 424 billion over twenty years. For the other two Councils, the losses would be slightly higher, reaching R\$ 433 billion. Back then, Ronald Santos, the President of National Health Council stated that the PEC n° 241/2016 would represent the UHS “death” (responsible for serving approximately 75% of the Brazilian population, about 150 million people) (G1 2016a).

People’s fears about the consequences of adopting such fiscal policy triggered protests across the country. Hundreds of Teaching Units (Federal Universities, Federal Institutes, public schools) were occupied by students and staff, all of them mobilized in defense of public education (G1 2016b) (G1 2016c) (G1 2016d). There were also crowds of people in public parks and streets. Streets and highways were blocked throughout Brazil, opposing the so-called “Bill of death”. (G1 2016e) (G1 2016d)

Among the demonstrations which occurred, two of them deserves special attention. The first one was the occupation of the building where the Republic Presidency Office is based in São Paulo city, October 10th, 2016. Brazilian Union of High School Students (*Brasileira dos Estudantes Secundaristas*), National Union of Students (*União Nacional dos Estudantes*) and Union of State Students (*União Estadual dos Estudantes*) carried out the act. (UBES 2016).

The second one occurred on November 29, 2016 in front of the National Congress. At that time, people linked to workers unions and student movements were heavily repressed during the protest. About fifty thousand people gathered in front of the Congress. Eventually, a car from a television station was dropped. After the incident, the military police threw more than a hundred moral effect and tear gas bombs, advanced with the cavalry towards the demonstrators, and used other violent tactics for dispersing the crowds. Demonstrators depredated several historic buildings. In addition, the Ministry of Education was invaded, the building had its glass broken and its equipment damaged. There were about forty people injured, including two police officers (one of them stabbed in the back and the other stoned in the head). At least four people were arrested. The proposal was approved by the Senate in the first stage of proceedings a few hours later (El Pais 2016).



Figure 1: Popular manifestation in front of National Congress against the Constitutional Amendment Bill, which freezes social investments for 20 years. (Source: Mídia Ninja 2016.)

Both the population's fears and the representative entities manifestations that expressed their fears about the negative Amendment impacts were based on official government documents.

PEC n° 241/2016 has not only established a limit for primary public expenditure, but also changed the calculation method for definition of the minimum values to be invested in the areas of health and education. The Technical Study n° 12/2016 of the Budget and Financial Inspection Consultancy of the Chamber of Deputies (*Consultoria de Orçamento e Fiscalização Financeira da Câmara dos Deputados*), for example, tried to discriminate the damages expected for these sectors. The document simulated the evolution of the constitutional minimums for these areas if PEC n° 241/2016 was in force by the period 2010-2016 (the year the research was carried out). In addition, the Study also presented projections for the period 2016-2025 (Brazil 2016b).

The document revealed that if the criteria set out by PEC n° 241/2016 had been applied since 2010, public education would have received less resources. The difference between the minimum defined by the calculation method provided by article 212 of Federal Constitution for the model established by the New Fiscal Regime, would be about R\$ 23.5 billion. In comparison with the amount effectively allocated to this area in the respective period (above the minimum), the difference would reach R\$ 94.8 billion. The projected resources for 2016-2025 registered a decrease of R\$ 32.2 billion if compared to the minimum that would be expected in compliance

with the original constitutional text. However, these differences could be even greater with the resumption of economic growth. (Brazil 2016b).

As in the case of education, it was also observed that there would be reductions in the allocation of resources to the health area. In a fictional scenario, which since 2010 the criteria for calculating the minimum investments in public health actions and services were those defined by PEC n° 241/2016, the difference would be R\$46.6 billion until 2016. The projection for the period 2016-2025 showed that the difference would be much larger, approximately R\$ 311 billion. (Brazil 2016b).

Therefore, despite the known shortcomings of public health and education services in Brazil, the Study has shown a future aggravation of the difficulties of these sectors due the mechanism imposed by the Amendment. (Brazil 2016b).

Another Federal Government document that corroborates with the perspective of crisis of the public services is the Technical Note n° 27 of 2016 of the Institute of Applied Economic Research (*Instituto de Pesquisa Econômica Aplicada*) - institution linked to the Ministry of Planning, now incorporated by the Ministry of Economy.

The Note aimed to measure the impact of the New Fiscal Regime on financing of the Brazilian Social Assistance Policy. The study was designed to project the Amendment impact from 2017 to 2036, considering only the changes in population dynamics and the expected aging of the population. The worsening on the poverty rates were not considered (Brazil 2016d).

The document predicted that there would be gradual reductions on resources available for financing the social assistance by 2036. The Institute indicated that in the first year there would be an 8% decrease of resources. However, the losses would not remain at this margin. There would have been a progressive decrease, reaching 54% in 2036. It means that to achieve the same level of social protection expected of Social Policy in 2016, the Ministry of Social and Agrarian Development would have less than half of the resources in 2036. Total losses on social assistance services projected for 20 years could reach R\$ 868.5 billion (Brazil 2016d). As result, the study indicated that the New Fiscal Regime would compromises the efforts to reduce poverty, inequality, and vulnerability, increasing the violation of rights. (Brazil 2016d).

Even by the time that the Constitutional Amendment Bill were being processed on National Congress, it was already known that its way of functioning would cause a gradual decline in the performance of Public Power in carrying out the obligations imposed by the Constitution. However, neither the popular demonstrations throughout Brazil nor the Governments technical

studies were enough to prevent the PEC n° 241/2016 from being approved on December 15th, 2016. The result of its approval was the publication of Constitutional Amendment 95.

3. THE FUNCTIONING OF CONSTITUTIONAL AMENDMENT 95

The Amendment inserted a series of commandments at Brazilian Transitory Constitutional Act (*Ato das Disposições Constitucionais Transitórias – ADCT*). The rules of the transitional provisions are part of the Constitution and have the same legal value as the rest of it. However, its transient nature denotes that these norms regulate individual and specific situations. Once the regulated interests are applied and terminated, the standards are exhausted and must no longer be applied in the future. These rules regulate well-defined situations and solve exceptional issues. This leads to the understanding that it is not possible to abstract arguments for interpretation of the permanent part of the Constitution from these devices (Silva 2008).

It is necessary to point out that the public budget in Brazil consists of forecasting the revenues and determination of expenses for the period of one year (article 165, §8, of the Federal Constitution). In fact, the public budget is the concrete face of state planning. In other words, it is the consolidation of a political and legal option adopted by State through the definition of financial revenues and expenses. (Noce 2018).

Despite the legally transient character of the Amendment, its effects can be understood as permanent if observed from a historical point of view. By introducing such comprehensive norms, with such great repercussions, covering such a long term, what is done is introducing permanent rules in the constitutional order disguised as if they were temporary. This argument is based in the fact that in addition of the first Brazilian Constitution (1891) and the current Constitution (1988), all the others have been in force for less than twenty years (Brazil 2016c).

By inserting Article 107 on ADCT, the Amendment set limits on primary expenses within the three State Power spheres (Executive, Legislative, and Judiciary), the Federal Public Prosecution Service and the Federal Public Defender Service. (Brazil 2016e).

For the Judiciary, each one of its composing agencies had its limits set in an individualized way. It happened to the *Supremo Tribunal Federal* (Supreme Federal Court), to the *Superior Tribunal de Justiça* (Superior Court of Justice), to the *Conselho Nacional de Justiça* (National Council of Justice), to the *Justiça do Trabalho* (Labour Justice), to the *Justiça Eleitoral* (Electoral Justice), to the *Justiça Federal* (Federal Justice) and to the *Tribunal de Justiça do Distrito Federal e Territórios* (Federal District and Territory's Justice Court). (Brazil 2016e).

In the Legislative, the limits of the *Senado Federal* (Federal Senate), the *Câmara dos Deputados* (Chamber of Deputies) and the *Tribunal de Contas da União* (Federal Court of Audit) were individualized. For the Public Prosecution Service was individualized the limit of the *Ministério Público da União* (Federal Public Prosecution Service) itself and the *Conselho Nacional do Ministério Público* (National Council of the Public Prosecution Service). The *Defensoria Pública da União* (Federal Public Defender Service) also had its limit individualized (Brazil 2016e).

Finally, the Executive. In this case, there is a peculiarity. Unlike the Legislative and Judiciary Branch, which had individualized the limits of the agencies that compose them, a generic limit was determined for the “Executive Branch” as whole. It means that any agency, entity, fund, or foundation that is linked to the Executive responds to the same limit of expenses. (Brazil 2016e).

From 2017 the limit started to be calculated based on the amount correspondent to the primary expenses incurred in 2016 (primary expenses paid, including other operations that affected the primary result). It was set that on each year this budget would be updated by the official inflation indicator until 2036, according to §1, II of article 107. (Brazil 2016e).

It is important to notice that the Amendment, setting the limits based on 2016 result, promoted a disconnection of budget planning in relation to the fiscal performance. Thus, regardless of how much taxes the Government receives after 2016, the real amount available for public services will always be the same. Even if Brazil presents an economic growth like China (7%, 8%, 9% per year), there would be no greater capacity to invest in essential services. All the surplus collected by the Federal Government would be used to pay the rising financial expenses. In addition, 2016 was a year of economic and fiscal crisis for the country. Taking 2016 as parameter for the establishment of limits means making the deficit reality of 2016 lasts more 20 years.

This scenario points to a continuous dismantling of public structures that serve the public services. The restrictions on the possibilities of admission or hiring staff are a representation of that. It is not even possible to think about public services without effective employees. If a civil servant retires and their position becomes vacant, there is the possibility that another person may be hired to fill this role. However, the retirement payments of those who are not working anymore is going to be accounted as primary expenses. Even after the civil servant leaves its position, his remuneration is going to keep pushing the limit to which it is linked. Consequently, it is impossible to remain within limits and to restore positions that become vacant over the next 20 years. There will be a progressive deterioration of state structures and services.

The Amendment was not restricted to the creation of individualized limits. The new rules also promoted changes on the method of calculating the constitutional minimum to be allocated on health and education areas.

The article 110 of ADCT determined that during the New Fiscal Regime the minimum investment in public health actions, services and maintenance, and development of education should be equivalent to 2017's minimum applications. (Brazil 2016e).

Until that date, the minimum that should be allocated on these areas was defined by articles 198, §2, I and article 212, of the Federal Constitution. For investments in public health, the Constitution determines that the resources should correspond to 15% of the net current revenue of the respective year. On the other hand, the minimum for education should represent 18% of income from taxes (Brazil 1988).

In addition to this provision, according to the section II, Article 110 of the ADCT, from 2018 the calculation of the minimum applications in both areas should take as reference 2017 amount corrected by the inflation variation, following the same correction parameters of the individualized limits (Brazil 2016e).

Nevertheless, these kinds of investments respond to the same limit: Executive's one. Thus, for investments to occur above the minimums established by the Amendment without exceeding the Executive limit, a proportional reduction of other actions performed would be necessary. The more that is invested in health and education, the less can be invested in other areas. Therefore, the new rules have a great destructive potential for social policies, putting at risk the quality of life of Brazilian population.

4. THE REDUCTION ON PUBLIC HEALTH FINANCING DURING THE CORONAVIRUS PANDEMIC

During the major pandemic of the last decades, Brazil has a highly fragile apparatus to face the problem. It is well known that limiting Coronavirus effects requires public investments. Allocating financial resources for the purchase of personal protective equipment (PPE), respirators, hiring trained personal (doctors, nurses), increasing the number of hospital beds; paying workers to stay home and supporting small companies. These items cannot solve the problem completely, but they surely make the job easier. It is also true that countries with better health conditions *before* the crisis are much more able to act in response to the crisis.

The actions of Brazilian Federal Government, in recent years, sacrificed rights and social resources on the altar of austerity. As an illustration, to contextualize Brazilian scenario concerning public health, we may quote some journalistic reports from 2019.

- *March 10, 2019* - The Minister of Economy, Paulo Guedes, claimed for a Constitutional Amendment unlinking revenues and expenses from the Budget. The amendment would turn “flexible” the budgetary management; for example, by ending up minimum investments in health and education (Valor 2019).
- *April 15, 2019* - Finance Secretary Esteves Colnago said there would be no public tender for the Federal Government in 2020. “The premise at this moment is not to hold public tenders”, he said. There are also no provisions to salary adjustments for public servants. The only exception is the military, because of the Armed Forces Pension reform, by which the gains of officers were increased (UOL Economia 2019).
- *June 4, 2019* - Economy Minister Paulo Guedes confirms that the government has chosen not to promote public tenders in the coming years. “In recent years, there has been surplus hiring. The wages have risen fiercely [...] In our accounts, 40% of public servants are expected to retire within the next five years. There is no need to fire them. Simply decelerate the entries and this *excess* goes away naturally. Let us not hire for a while but computerize”. (Jovem Pan 2019).

These journalistic notes do not measure the impact of the Constitutional Amendment on the health system by themselves, but they expand our subsidies for understanding the Brazilian political, economic, and social context on the eve of the crisis caused by the Coronavirus.

It is noteworthy that the Minister of Economy, a few months after taking the charge, declared his intention to turn “flexible” all constitutional commandments that determine the allocation of resources to the health and education areas. As will be shown below, that significant reductions had already occurred in previous years.

In addition, the premise of not holding public tenders in 2020 and the prospect of reducing the number of civil servants by 40% within five years (by not replacing vacant positions) documents the scenario upon arrival of Coronavirus. Among these servers are counted doctors, nurses, researchers, and professionals who could contribute in countless ways to overcome this crisis.

However, in addition to these journalistic facts, we should examine the documents proving the performance of Constitutional Amendment 95, debating the way the Amendment affected resources allocated to the public health system in Brazil. We shall examine the expenses authorized by the budgetary laws concerning the Ministry of Health, namely those expenses with personnel and social charges, as well as investments.

Understanding these expenditure authorizations is essential, as they have a direct relation with the State's capacity to guarantee public services for society. Expense commitments do not necessarily represent the amounts spent. However, they constitute an important record on the budget planning and on the adequacy of that planning to all expenditure restrictions imposed by the Constitutional Amendment 95. Therefore, these data reveal the nature of the budget planning carried out by the Federal Government and approved by Congress in that period.

We shall start with the authorization of expenses corresponding to the expenses with “Personnel and Social Charges” of the Ministry of Health in the period 2013-2020. Fiscal Responsibility shows us that “personnel expenses” includes expenses with active and inactive personnel and pensioners, related to elective mandates, positions, functions or jobs, civil, military and members of public powers, including fixed and variable salaries and benefits, subsidies, retirement benefits, pensions, bonuses, personal benefits of any nature, social charges and contributions paid by the entity to the Social Security entities. Total expenses authorized by the Budget Law are the following:

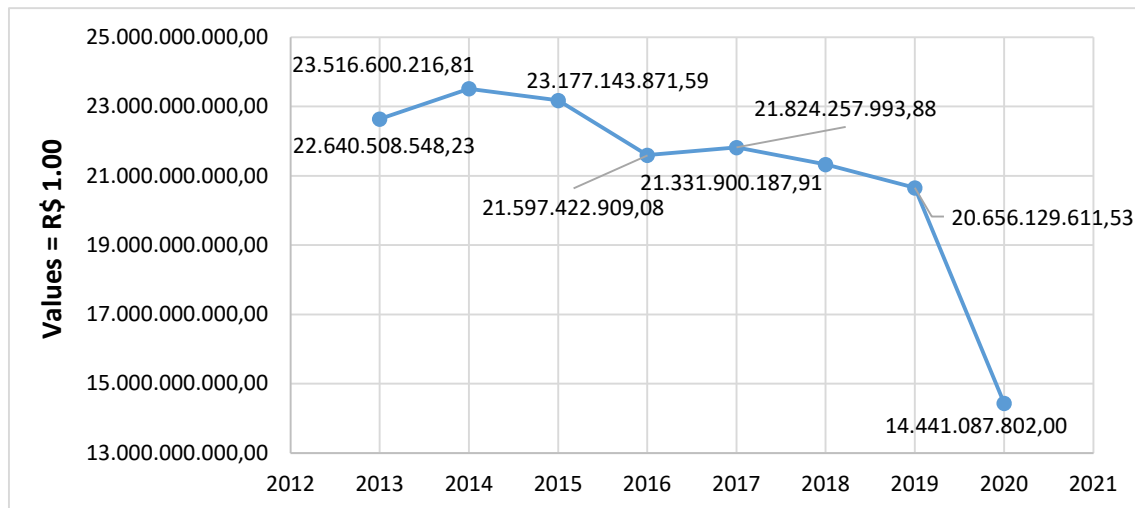
**Table 1. “Personnel and Social Charges” from the Ministry of Health
(expenditures authorized by Budget Laws)**

2013	R\$ 15,298,193,930.00 (BRAZIL, 2013)
2014	R\$ 16,829,408,015.00 (BRAZIL, 2014)
2015	R\$ 17,649,277,274,00 (BRAZIL, 2015)
2016	R\$ 18,201,726,934.00 (BRAZIL, 2016f)
2017	R\$ 19,549,452,430.00 (BRAZIL, 2017)
2018	R\$ 19,671,606,743.00 (BRAZIL, 2018)
2019	R\$ 19,761,888,354.00 (BRAZIL, 2019a)
2020	R\$ 14,441,087,802.00 (BRAZIL, 2020a)

It should be noted that these figures were taken directly from the Federal Budget Laws, so that they cannot be compared with each other because they do not consider inflation in the period. To identify the consequences, monetary correction was based on the Consumer Price Index (*Índice de Preços ao Consumidor Amplo – IPCA*). That is the same index used to update individual limits and minimum resources to be allocated for health and education. We used the “Citizen Calculator”, available at the Central Bank's website (2020b). The following chart is based on the monetary

update of authorized expenditures. It shows, therefore, the real scenario of budget planning related to “Personnel and Social Charges” from the Ministry of Health.

Chart 1: “Personnel and Social Charges” from the Ministry of Health
(values corresponding to January 2020) *



* Source: Authors, based on Annual Budget Laws 2013-2020

The Chart shows the investment related to personnel expenses from 2014 to 2020. The difference between what was allocated in 2014 and what was allocated in 2020 is R\$ 9,075,512,414.81 – that is, 38.59%.

To analyze the Amendment, the most relevant data are the expenses authorized in 2017 (which corresponds to the first year to individualize the Executive Branch limit) and 2018 (first year to change the way of calculating the minimum amount destined to public health by the Federal Government).

The decreasing in resource allocation in these years is self-evident. But it is also worth mentioning two other factors. First one concerns the year of entry into force of the Amendment (2017). When taking the value of that year as a reference (R\$ 21,824,257,993.88) and keeping it constant for the following years (2018, 2019 and 2020), the difference between consolidated authorizations in the same period would be R\$ 9,043,656,380.20. Second one concerns in applying the same logic taking 2018 as a reference. In that case, the difference would be exactly R\$ 7,566,582,962.29.

The performance related to “Investments” under the Ministry of Health is also worthy of attention, as it presents significant reduction. Following the same procedure indicated for

“Personnel and Social Charges” expenses, the expenditures in “Investments” were identified considering Budget Laws from 2013 to 2020. Investments, in this context, are all the necessary improvements to infrastructure of public services, granted by Federal Government. (BRASIL, 2019b, article 43, §1º).

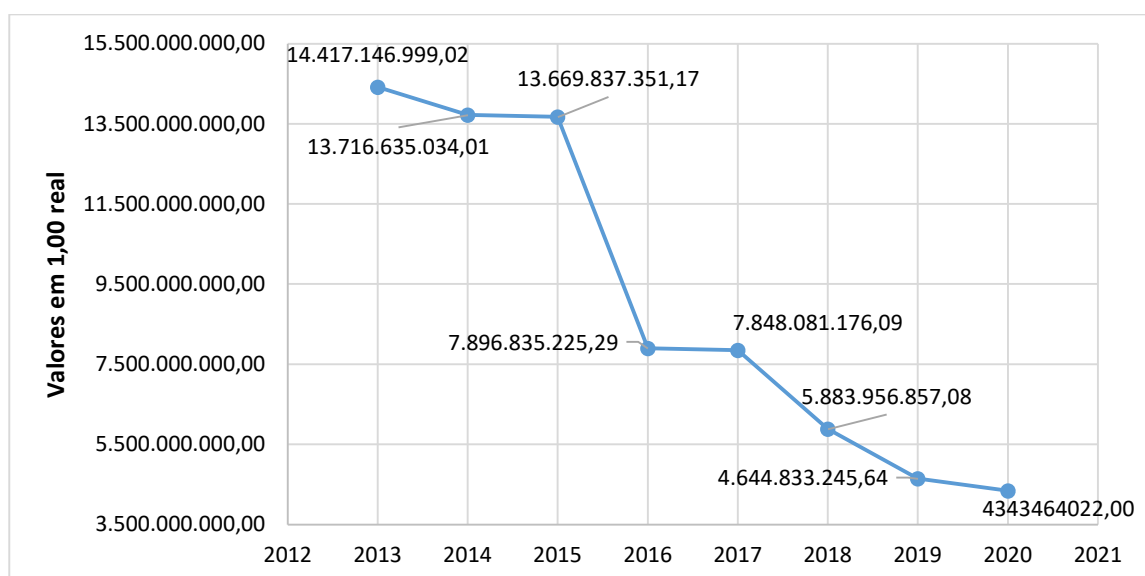
Authorized expenditure was as follows.

**Table 2. “investments” from the Ministry of Health:
(expenditures authorized by Budget Laws)**

2013	R\$ 9,741,667,688.00 (BRAZIL, 2013)
2014	R\$ 9,816,165,834.00 (BRAZIL, 2014)
2015	R\$ 10,409,511,674,00 (BRAZIL, 2015)
2016	R\$ 6,655,240,258.00 (BRAZIL, 2016f)
2017	R\$ 7,030,052,965.00 (BRAZIL, 2017)
2018	R\$ 5,425,999,764.00 (BRAZIL, 2018)
2019	R\$ 4.443.750.003,00 (BRAZIL, 2019a)
2020	R\$ 4.343.464.022,00 (BRAZIL, 2020a)

The following chart is also based on the monetary update of authorized expenditures. It shows, therefore, the real scenario of budget planning related to “investments” from the Ministry of Health.

**Chart 2: “investments” from the Ministry of Health
(values corresponding to January 2020) ***



* Source: Authors, based on Annual Budget Laws 2013-2020

As in the previous Chart, a considerable and constant reducing in investments related to the Ministry of Health is evident. The difference between 2013 (the highest amount) and the last year (the lowest amount) exceeds R\$ 10 billion.

As examined in Chart 1, it is also important to assess the impact of the Amendment. Following the same logic, comparing this with an alternative scenario - in which the amounts authorized for the Ministry's investments in 2017 remained the same - there would be a difference of R\$ 8,671,989,403.55. If considering the year 2018 as a comparative basis, this difference would be R\$ 2,779,616,446.52.

In this context of extreme weakness of the health system in Brazil, Covid-19 arrives. Lethal consequences of Amendment were well known since before its approval. However, adding the pandemic to this scenario, it is even worse. This shows even more clearly the impacts of such a political decision limiting primary expenditures to guarantee unlimited financial expenses, notably those related to interests and amortization of public debt.

Based on the information and data available, considering the restrictions imposed by Amendment, it can be said that Brazilian Federal Government would never be able to respond properly to the health crisis.

The solution to this deadly end, facing the need to direct many resources to the health area, is provided for by the article 107, §6, II of ADCT. It is determined that “extraordinary credits”, referred at Federal Constitution, article 167, § 3, are not part of calculation basis of the limits imposed by the New Fiscal Regime. Extraordinary credits should be considered in the case of unpredictable and urgent situations, like war or any kind of calamities or internal commotions.

On March 20th, 2020, National Congress enacted the Legislative Decree 6/2020, declaring public calamity as result of the COVID-19 pandemic, which lasts until December 31st, 2020 (BRAZIL, 2020c).

Until present date (April 2020), Brazilian Federal Government has published 11 Provisional Measures opening extraordinary credits, based on Legislative Decree 6/2020. These credits benefited the Ministries of Health, Education, Science and Technology, Communications, Foreign Affairs, Defense, Citizenship, Economy, Justice and Public Security, Gender, Family, Human Rights, Mines and Energy. The total is R\$ 224,058,220,629.00.

Thus, despite the dismantling of the health system by the Constitutional Amendment 95, Federal Government was able to mobilize resources in a way that did not violate the Law of Fiscal Responsibility, nor the impositions of the Fiscal Regime. However, cumulative effects of budget

restrictions in recent years are going to impose a high cost on Brazilians who, during the pandemic, seek health services.

5. CONCLUSIONS

Examining the events occurred after 2016, it is noticeable that Brazilian experiences a political, economic, and social crisis. Despite all popular demonstrations opposing the budgetary restrictions occasioned by Constitutional Amendment 95, Federal Government has been adopting highly damaging measures to the well-being of most of the population.

This statement stems from examining the new Fiscal Regime and from the analyses of the expense's authorization related to the Ministry of Health, which in this paper allowed us to exemplify the tendency of reducing resources destined to the so-called "primary expenses" in general. It should be noted that although the analysis carried out in detail is limited to the consequences for the Ministry of Health, all public policies carried out by the Executive Branch are affected by the same mechanisms, as seen in section 3. The functioning is the same for every right of Constitutional "Social order", including environmental rights. In 2019 it got even more explicit. (Direto da Ciência, 2019) (El Pais, 2019) (Estadão, 2019) (G1, 2019) (O Globo, 2019a) (O Globo, 2019b).

Constitutional Amendment 95 did not resolve the fiscal crisis, which is more serious than ever. On the other hand, negative consequences reach social assistance, public education, and environmental management. Brazilian fiscal policy represents the denial of any social development for the next 20 years, not allowing any changes in political economy orientation or even to discuss priorities. It is project with political and economic consequences, that sacrifices the country's sovereignty to increase interest gains concerning public debt.

Even though the budget is, in theory, a public good, the case shows that the State acts to privatize public resources, guaranteeing the speculative gain of a small number of investors. Half of the resources in this country are destined to pay holders of public debt with one of the world's highest interest rates, with no technical explanation or justification. That is why we propose studying federal public budget by the lens of the *commons*. As a crucial resource belonging to society, public wealth should be understood as a common resource. Thus, we shall criticize the enclosure of this commons through the enclosure of the State itself, postulating institutional changes, in the sense of its effective social control. The task for democratic forces is turning State mechanisms and public services into commons, applying the principles and lessons from the literature.

The “commons” are a principle that gives visibility and priority to what is not easily understood neither in the private/individual sphere, nor in the state-law sphere. The commons concern a collective and relational sphere of life. It has points of contact with private/individual business and with State law, yet correspond to a completely different logic, which is collective and relational. We propose to apply the lessons of this field of study to critically assert the budget problem. The conceptual tools found in the literature about the commons allow us to critically analyze, as it is the case here, what kind of relationships between social actors and resources are established through legal categories.

Of course, the commons, according to both theory and *praxis*, operate according through the idea of autonomy. But it is a huge mistake to conceive a society apart from the State apparatus, as if it were possible to exchange, once and for all, a certain powerful institution for alternatives ones. The problem is to reshape these structures, that is, changing the principles by which they operate. That is a challenge to rethink democracy at the Century XXI.

The privatization “*de facto*” of the public budget is clear. Brazilian public budget is controlled by financial interests clearly opposed to the interests of the public, in such a way that public agents commonly act as guarantors of private interests. Since the budget is not state property but a society-wide resource, it should be managed for the benefit of the society, with a more direct participation of the community in decision making, as well as developing forms of controlling decisions of public agents.

REFERENCES

- Bollier, D. (2003) *Silent theft: the private plunder of our common wealth*. New York, RoulteLedge.
- Boyle, James (2008). *The public domain: enclosing the commons of the mind*. New Haven, Yale University Press.
- Brazil. (1988), *Constituição da República Federativa do Brasil*. Brasília, DF: Senado 1988. [online] Available at: http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao34.htm [Access em: 07 ago. 2017].
- Brazil. (2013), *Orçamento da União. Exercício Financeiro de 2013*. Orçamento Fiscal e da Seguridade Social. Volume IV. Detalhamento dos Créditos Orçamentários. Órgão do poder executivo. Presidência da República e Ministérios (exceto MEC). Brasília, DF: Câmara dos Deputados, 2013. Available at: <https://www.camara.leg.br/internet/comissao/index/mista/orca/orcamento/or2013/lei/L12798-13-VolumeIV.pdf> [Access: may 1st 2020].
- Brazil. (2014), *Lei Orçamentária Anual 2014*. Volume I. Quadro 5: Despesas dos Orçamentos Fiscal e da Seguridade Social por Poder, Órgão, Unidade Orçamentária, Fontes de Recursos e Grupos de Natureza de Despesa. Brasília, DF: Câmara dos Deputados, 2014. Available at:

https://www.camara.leg.br/internet/comissao/index/mista/orca/orcamento/OR2014/red_final/vol1/V01_12_quadro5.pdf [Access: may 1st 2020].

Brazil. (2015), *Lei Orçamentária Anual 2015*. Volume I. Brasília, Quadro 5: Despesas dos Orçamentos Fiscal e da Seguridade Social por Poder, Órgão, Unidade Orçamentária, Fontes de Recursos e Grupos de Natureza de Despesa. Available at: http://www.camara.leg.br/internet/comissao/index/mista/orca/orcamento/OR2015/red_final/vol1/V01_12_quadro5.pdf [Access: may 1st 2020].

Brazil. (2016a), *EMI nº 00083/2016 MF MPDG*. Available at: http://www.planalto.gov.br/ccivil_03/Projetos/ExpMotiv/EMI/2016/83.htm [Access: sept 22nd 2020].

Brazil. (2016b), Ricardo Alberto Volpe. Câmara dos Deputados. Estudo Técnico n.º 12/2016: IMPACTOS DO “NOVO REGIME FISCAL” - SUBSÍDIOS À ANÁLISE DA PROPOSTA DE EMENDA À CONSTITUIÇÃO - PEC Nº 241/2016. Consultoria de Orçamento e Fiscalização Financeira, Brasília, v. 12, n. 1. ago. 2016. Consultoria de Orçamento e Fiscalização Financeira. [online] Available at: <http://www2.camara.leg.br/orcamento-da-uniao/estudos/2016/EstudoTcnicon122016versao21ago_publicado.pdf>. [Access: sept 22nd 2020].

Brazil. (2016c), Ronaldo Jorge Araujo Vieira Junior. Senado Federal. As inconstitucionalidades do "Novo Regime Fiscal" instituído pela PEC nº 55, de 2016 (PEC nº 241, de 2016, na Câmara dos Deputados), *Boletim Legislativo: Núcleo de Estudos e Pesquisas da Consultoria Legislativa*, Brasília, v. 53, n. 1. nov. 2016. [online] Available at: <http://www2.senado.leg.br/bdsf/handle/id/525609> [Access: sept 22nd 2020].

Brazil. (2016d), Andrea Barreto de Paiva, Ana Cleusa Serra Mesquita, Luciana Jaccoud, et. al. Nota Técnica nº 27: o novo regime fiscal e suas implicações para a política de assistência social no Brasil. *Instituto de Pesquisa Econômica Aplicada – IPEA*, Brasília Set. 2016. p.13. [online] Available at: http://www.ipea.gov.br/portal/images/stories/PDFs/nota_tecnica/160920_nt_27_disoc.pdf [Access: sept 22nd 2020].

Brazil. (2016e), *Constitutional Amendment no. 95* Amends the Transitional Constitutional Provisions Act, to establish the New Fiscal Regime, and gives other measures. [online]. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc95.htm [Access: sept 22nd 2020].

Brazil. (2016f), *Lei Orçamentária Anual 2016*. Volume I. Brasília, Quadro 5: Despesas dos Orçamentos Fiscal e da Seguridade Social por Poder, Órgão, Unidade Orçamentária, Fontes de Recursos e Grupos de Natureza de Despesa. Brasília, DF: Câmara dos Deputados, 2016. Available at: http://www.camara.leg.br/internet/comissao/index/mista/orca/orcamento/OR2016/red_final/vol1/V01_12_quadro5.pdf [Access: may 1st 2020].

Brazil. (2017), *Lei Orçamentária Anual 2017*. Volume I. Brasília, Quadro 5: Despesas dos Orçamentos Fiscal e da Seguridade Social por Poder, Órgão, Unidade Orçamentária, Fontes de Recursos e Grupos de Natureza de Despesa. Brasília, DF: Câmara dos Deputados, 2017. Available at: http://www.camara.leg.br/internet/comissao/index/mista/orca/orcamento/OR2017/red_final/Volume_I.pdf [Access: may 1st 2020].

Brazil. (2018), *Lei Orçamentária Anual 2018*. Volume I. Brasília, Quadro 5: Despesas dos Orçamentos Fiscal e da Seguridade Social por Poder, Órgão, Unidade Orçamentária, Fontes de Recursos e Grupos de Natureza de Despesa. Brasília, DF: Câmara dos Deputados, 2018. Available at: http://www.camara.leg.br/internet/comissao/index/mista/orca/orcamento/OR2018/red_final/Volume_I.pdf [Access: may 1st 2020].

Brazil. (2019a), *Orçamento da União. Exercício Financeiro de 2019*. Brasília, Volume I - Quadros orçamentários consolidados. Detalhamento da receita legislação da receita e da despesa. Available at: https://www.camara.leg.br/internet/comissao/index/mista/orca/orcamento/OR2019/red_final/Volume_I.pdf [Access: may 1st 2020].

Brazil. (2019b), *Lei nº 13.898, de 11 de novembro de 2019*. Dispõe sobre as diretrizes para a elaboração e a execução da Lei Orçamentária de 2020 e dá outras providências. Brasília, DF: Câmara dos Deputados, 2019. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/L13898.htm [Access: may 1st 2020].

Brazil. (2020a), *Orçamento da União. Exercício Financeiro de 2020*. Brasília, Volume I - Quadros orçamentários consolidados. Receita dos orçamentos fiscal e da seguridade social legislação da receita e da despesa. Brasília, DF: Câmara dos Deputados, 2020. Available at: <https://www.gov.br/economia/pt-br/assuntos/orcamento/orcamentos-anuais/2020/loa/ANL13978Vol1.pdf> [Access: may 1st 2020].

Brazil. (2020b), Banco Central do Brasil. Ministério da Economia. *Calculadora do cidadão*. Correção de valor por índices de preços. Brasília, DF: Banco Central do Brasil, 2020. <https://www3.bcb.gov.br/CALCIDADA0/publico/exibirFormCorrecaoValores.do?method=exibirFormCorrecaoValores> [Access: may 1st 2020].

Brazil. (2020c), *Decreto Legislativo nº 6, de 20 de março de 2020*. Reconhece, para os fins do art. 65 da Lei Complementar nº 101, de 4 de maio de 2000, a ocorrência do estado de calamidade pública, nos termos da solicitação do Presidente da República encaminhada por meio da Mensagem nº 93, de 18 de março de 2020. Brasília, DF: Senado Federal, 2020. http://www.planalto.gov.br/ccivil_03/portaria/DLG6-2020.htm [Access: may 1st 2020].

CRESS/SC. (2018), *Assistentes Sociais contra os novos cortes no orçamento Federal para 2019*. [online] Available at: <http://cress-sc.org.br/2018/09/24/assistentes-sociais-contras-os-novos-cortes-no-orcamento-federal-para-2019/> [Access: sept 22nd 2020].

Direto da Ciência. (2019), *Bolsonaro congela 42% dos recursos para Ciência e 23% para Meio Ambiente*. [online] Available at: <http://www.diretodaciencia.com/2019/03/30/bolsonaro-congela-42-dos-recursos-para-ciencia-e-23-para-meio-ambiente/>

El país (2016). *Ato contra PEC do Teto tem repressão policial e depredação em Brasília. Cerca de 40 pessoas ficaram feridas, sendo um policial esfaqueado e outro apedrejado. Quatro manifestantes acabaram presos depois de depredarem carros e prédios*. [online] Available at: https://brasil.elpais.com/brasil/2016/11/30/politica/1480467389_837114.html

El País. (2019), Os primeiros efeitos da asfixia financeira de Bolsonaro sobre as ciências do Brasil: Governo bloqueou dinheiro de pesquisas e universidades para se adequar a teto de gastos. Várias instituições preveem faltar verba para água e luz e se queixam de movimento anticiência. [online]

Available at: https://brasil.elpais.com/brasil/2019/05/02/politica/1556819618_348_570.html [Access: sept 22nd 2020].

Estadão. (2019), *Governo zera verba de 140 projetos em 11 ministérios*. [online] Available at: <https://www.estadao.com.br/infograficos/economia,governo-zera-verba-de-140-projetos-em-11-ministerios-confira-o-tamanho-do-corte-em-cada-area,996736> [Access: sept 22nd 2020].

G1 (2016a). *Saúde pode ter perdas bilionárias com PEC do teto, avaliam entidades: Conselhos estimam perdas de mais de R\$ 400 bi nos próximos 20 anos: Para Conselho Nacional, PEC seria a 'morte' do SUS. Governo contesta*. [online] Available at: <http://g1.globo.com/economia/noticia/2016/10/saude-pode-ter-perdas-bilionarias-com-pec-do-teto-avaliam-entidades.html> [Access: sept 22nd 2020].

G1 (2016b). *Sobe para 12 número de instituições de ensino ocupadas em Alagoas: Três campi do IFAL, um da UFAL e duas escolas foram ocupados: Estudantes protestam contra a PEC 241 e a reforma do Ensino Médio*. [online] Available at: <http://g1.globo.com/al/alagoas/noticia/2016/10/mais-5-instituicoes-de-ensino-sao-ocupadas-por-estudantes-em-alagoas.html> [Access: sept 22nd 2020].

G1. (2016c), *Servidores da UFBA entram em greve e fecham portões contra PEC 241: Categoria fechou portão principal do campus de Ondina nesta segunda-feira: Proposta de Emenda à Constituição (PEC) 241 limita gastos públicos*. [online] Available at: <http://g1.globo.com/bahia/noticia/2016/10/servidores-da-ufba-entram-em-greve-e-fecham-portoes-contra-pec-241.html> [Access: sept 22nd 2020].

G1. (2016d), *Grupo fecha Eixo Monumental em ato contra PEC do teto de gastos. Protesto tem alunos de escolas públicas e institutos federais e servidores. Manifestantes fecharam todas as faixas no sentido Congresso Nacional*. [online] Available at: <http://g1.globo.com/distrito-federal/noticia/2016/10/grupo-fecha-eixo-monumental-em-ato-contra-pec-do-teto-de-gastos.html> [Access: sept 22nd 2020].

G1. (2016e), *Grupos protestam contra a PEC 241 em ao menos 15 estados e no DF Proposta que limita gastos deve ir ao plenário da Câmara nesta terça. Entre os manifestantes, há servidores, professores universitários e alunos*. [online] Available at: <http://g1.globo.com/politica/noticia/2016/10/grupos-protestam-contra-pec-241-pelo-pais.html>

G1. (2019), *Bloqueios atingem de 15% a 54% dos recursos que podem ser cortados das universidades federais, diz Andifes*. [online] Available at: <https://g1.globo.com/educacao/noticia/2019/05/16/bloqueios-atingem-de-15percent-a-54percent-dos-recursos-que-podem-ser-cortados-das-universidades-federais-diz-andifes.ghtml>

Harvey, D. (2003). *The new imperialism*. Oxford University Press.

Jorge A. V. J. R. (2016), *As inconstitucionalidades do "Novo Regime Fiscal" instituído pela PEC nº 55, de 2016 (PEC nº 241, de 2016, na Câmara dos Deputados)*. *Boletim do Legislativo: Núcleo de Estudos e Pesquisas da Consultoria Legislativa*, [online] 53(11). Available at: <https://www12.senado.leg.br/publicacoes/estudos-legislativos/tipos-de-estudos/boletins-legislativos/bol53>

Jovem Pan. 2019. *Paulo Guedes confirma que não haverá concursos públicos nos próximos anos*. Available at: <https://jovempan.uol.com.br/noticias/brasil/paulo-guedes-confirma-que-nao-havera-concursos-publicos-nos-proximos-anos.html>

Marx, K. (2017) *Os despossuídos*. São Paulo, Boitempo.

Mídia Ninja. (2016), Tiro, porrada e bomba: a crise mortal da democracia representativa no Brasil. [online] Available at: <http://midianinja.org/2017/05/page/4/>

Minayo, M.C. de S. (2014). *Pesquisa Social: teoria, método e criatividade*. 22 ed. Rio de Janeiro: Vozes.

Neeson, J. M. (1993) *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820*. Cambridge.

Klein, N. (2001). *Reclaiming the commons*. New Left Review, n. 9, maio/jun.

Noce, U. A.; Clark, G. (2018), A emenda constitucional nº 95/2016 e a violação da ideologia constitucionalmente adotada. *Rei - Revista Estudos Institucionais*, 3(2): 1216-1244. 25 fev. 2018. <http://dx.doi.org/10.21783/rei.v3i2.194>. p. 1222.

O Globo. (2019a), *Dinheiro de pesquisas científicas brasileiras acaba em julho*. [online] Available at: https://oglobo.globo.com/sociedade/dinheiro-de-pesquisas-cientificas-brasileiras-acaba-em-julho-23569008?utm_source=Whatsapp&utm_medium=Social&utm_campaign=compartilhar [Access: sept 22nd 2020].

O Globo. (2019b), *Ministério do Meio Ambiente bloqueia 95% da verba para o clima*. [online] Available at: <https://oglobo.globo.com/sociedade/ministerio-do-meio-ambiente-bloqueia-95-da-verba-para-clima-23646502>

Portal da Transparência. Prefeitura de São Paulo. (2018), *Despesa Primária*. Glossário. [online] Available at: <http://transparencia.prefeitura.sp.gov.br/Lists/Glossario/DispForm.aspx?ID=83>.

Rodgers, C. [et al.] (2011) *Contested Common Land: Environmental Governance Past and Present*. London, Earthscan.

Rosenman, Ellen. On Enclosure Acts and the Commons. Branch: Britain, Representation and Nineteenth-Century History. Ed. Dino Franco Felluga. Available at: http://www.branchcollective.org/?ps_articles=ellen-rosenman-on-enclosure-acts-and-the-commons [Access: 24 april 2020]

Silva, J. A. da. (2008), *Aplicabilidade das normas constitucionais* (São Paulo, Malheiros Editores). 7ª edição.

UBES (2016). *Em SP, movimento estudantil inicia ocupação no escritório da Presidência da República contra PEC 241: Organizada pela UBES, UNE, UEE E UPES, a mobilização luta contra a autoritária MP de reforma do ensino médio e a PEC 241*. [online] Available at: <http://ubes.org.br/2016/movimento-estudantil-inicia-ocupacao-no-escritorio-da-presidencia-da-republica-em-sp-contrapec-241/> [Access: sept 22nd 2020].

UOL Economia. (2019), *Governo define que não haverá concurso público em 2020*. [online] Available at: <https://economia.uol.com.br/noticias/redacao/2019/04/15/concurso-publico-2020.htm?cmpid=copiaecola> [Access: sept 22nd 2020].

UOL Educação. (2019), *Estados registram protestos contra bloqueio de verbas na educação*. [online] Available at: <https://educacao.uol.com.br/noticias/2019/05/30/protestos-bloqueio-de-verbas-educacao-pelo-pais.htm> [Access: sept 22nd 2020].

Valor. (2019), *Guedes diz ter pronta PEC para desvinculação total do Orçamento*. [online] Available at: <https://www.valor.com.br/brasil/6152619/guedes-diz-ter-pronta-pec-para-desvinculacao-total-do-orcamento> [Access: sept 22nd 2020].

Vieira Junior, J. A. (2016), As inconstitucionalidades do "Novo Regime Fiscal" instituído pela PEC n° 55, de 2016 (PEC n° 241, de 2016, na Câmara dos Deputados). *Boletim do Legislativo: Núcleo de Estudos e Pesquisas da Consultoria Legislativa*, [online] 53(11). Available at: <https://www12.senado.leg.br/publicacoes/estudos-legislativos/tipos-de-estudos/boletins-legislativos/bol53> [Access: sept 22nd 2020].

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