

**O DISCURSO DA EMENDA N. 95/2016 NO CONTEXTO DA
GOVERNAMENTALIDADE NEOLIBERAL**

***EL DISCURSO DE LA ENMIENDA N. 95/2016 EM EL CONTEXTO DE LA
NEOLIBERAL GUBERNAMENTALIDAD***

***THE DISCOURSE OF AMENDMENT N. 95/2016 IN THE CONTEXT OF
NEOLIBERAL GOVERNMENTALITY***

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RESUMO: O texto apresenta uma análise sobre o discurso da criação da Emenda Constitucional n. 95/2016 em uma perspectiva foucaultiana. Os princípios do Novo Regime Fiscal (NRF) determinam uma redução dos investimentos nos setores da saúde e da educação. Diante disso, busca-se identificar o contexto da Emenda na conjuntura de uma governamentalidade que está relacionada ao modo como os sujeitos são conduzidos, bem como apontar relações sobre a emergência de uma governamentalidade neoliberal em que o Estado tende a sofrer uma maior influência da iniciativa privada no setor educacional. Considera-se a proposta desta Emenda uma biopolítica, pelo fato de orientar os corpos dos sujeitos e conduzi-los no processo de sua constituição em uma relação de poder e controle.

PALAVRAS-CHAVE: Poder. Governamentalidade. Biopolítica. Resistência.

RESUMEN: *El texto presenta un análisis sobre el discurso de la creación de la Enmienda Constitucional n. 95/2016 em una perspectiva foucaultiana. Los principios del Nuevo Régimen Fiscal (NRF) determinan una reducción de las inversiones em los sectores de salud y educación. Ante esto, buscamos identificar el contexto de la Enmienda em la coyuntura de una gubernamentalidade relacionada con la forma em que se conducen los temas, así como señalar las relaciones sobre el surgimento de una gubernamentalidade neoliberal em la que el Estado tiende a estar más influenciado por la iniciativa privada em el sector educativo. La propuesta de esta Enmienda se considera una biopolítica, porque guía los cuerpos de los sujetos y los guía em el proceso de su constitución em una relación de poder y control.*

PALABRAS CLAVE: Poder. Gubernamentalidad. Biopolítica. Resistencia.

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ABSTRACT: *The text presents an analysis on the discourse on the creation of Constitutional Amendment n. 95/2016 in a Foucauldian perspective. The principles of the New Fiscal Regime (NRF) determine a reduction in investments in the health and education sectors. Therefore, we seek to identify the context of the Amendment in the conjuncture of a governmentality that is related to the way subjects are conducted, as well as to point out relations about the emergence of a neoliberal governmentality in which the State tends to be influenced by the private initiative, in the education sector. The proposal of this Amendment is considered biopolitics, because it guides the bodies of the subjects and leads them in the process of their constitution in a relationship of power and control.*

KEYWORDS: *Power. Governmentality. Biopolitics. Resistance.*

Introduction

Analyzing a document requires an understanding of its discourse and its effects on discursive practices, which concerns a set of statements that “shape our ways of constituting the world, of understanding and talking about it” (VEIGA-NETO, 2011, p. 93). Understanding this discourse consists of an observation of the objectification process about the subjects that the document implies through normalization. In this context:

As much as the discourse seems to be not much, the interdictions that affect it quickly reveal its connection with desire and power. There is nothing surprising about this, since discourse - as psychoanalysis has shown us - is not simply that which expresses (or hides) desire; it is also what is the object of desire; and since - this history does not cease to teach us - discourse is not simply that which translates the struggles or systems of domination, but that which, for what one fights, the power that we want to seize (FOUCAULT, 2008 p. 9-10).³

The amendment's discourse constitutes a discursive practice due to its standardization, and in this circumstance, non-discursive practices arise that represent the meaning and effectiveness of the document in the exercise of its practice. The speech of Amendment no. 95/2016 (CA) determines a power relationship that involves life, structured by biopower, in the mode of action on subjects, in how individuals have their own body structured in a power relationship that:

On the contrary, for Foucault, power is not something you take, something you have or gain, but something you exercise. In effect, there is no Power on

³ Por mais que o discurso seja aparentemente bem pouca coisa, as interdições que o atingem revelam logo, rapidamente, sua ligação com o desejo e com o poder. Nisto não há nada de espantos, visto que o discurso – como a psicanálise nos mostrou - não é simplesmente aquilo que manifesta (ou oculta) o desejo; é, também, aquilo que é objeto do desejo; e visto que – isto a história não cessa de nos ensinar – o discurso não é simplesmente aquilo que traduz as lutas ou os sistemas de dominação, mas aquilo por que, pelo que se luta, o poder do qual nós queremos apoderar (FOUCAULT, 2008, p. 9-10).

the one hand and no individuals on the other, but individuals exercising powers in what he calls the art of government. ‘Government’ doesn’t mean, in this view, a state apparatus, but the way in which the conduct of individuals is directed, in any sphere. To govern, says Foucault, is to structure the possible action of others. So, the exercise of power is a way in which certain actions structure the field of other possible actions. Thus, the productive character is affirmed, not only repressive of power (KOHAN, 2011, p. 72).⁴

Amendment no. 95/2016 inserted in larger education

Veiga-Neto (2011), in the work entitled “*Foucault & a Educação*” (Foucault and the Education), carries out a study on the works of Michel Foucault and relates the concepts that the philosopher proposes to the disciplinary context of the school institution, since the philosopher did not have his writings turned directly to the school. The author argues that in the Foucaultian perspective:

Therefore, speeches are not the result of the combination of words that represent things in the world ... On the contrary, “speeches systematically form the objects that speak. Certainly, speeches are made of signs; but what they do is more than using these signs to designate things. It is this more that makes them irreducible to language and the act of speaking” (VEIGA-NETO, 2011, p. 93).⁵

In this designation, the speech constitutes its materiality in the object itself, in which the New Tax Regime (NTR) is configured. This determines that the public resources of the educational sector acquire a limit, a ceiling on their investments. And so, school institutions are faced with a limitation stipulated for twenty years. In this context, the educational laws with their goals and principles are changed in the face of this control, in which they are inserted in a greater education, which according to Gallo (2008), situates:

Larger education is that of ten-year plans and public education policies, parameters and guidelines, that of the constitution and the Law of Guidelines and Bases for National Education, designed and produced by well-thinking heads in the service of power. Larger education is that instituted and the one

⁴ Ao contrário, para Foucault, o poder não é algo que se toma, algo que se tem ou se conquista, mas algo que se exerce. Com efeito, não existe o Poder por lado e os indivíduos por outro, mas indivíduos exercendo poderes no que ele chama de arte de governo. ‘Governo’ não quer dizer, nesta ótica, aparato estatal, mas o modo como se dirige, em qualquer âmbito, a conduta dos indivíduos. Governar, diz Foucault, é estruturar o possível de ação dos outros. De modo que o exercício do poder é um modo como certas ações estruturam o campo de outras possíveis ações. Assim, se afirma o caráter produtivo, não apenas repressivo do poder (KOHAN, 2011, p. 72).

⁵ Os discursos não são, portanto, resultado da combinação de palavras que representam as coisas no mundo [...] Ao contrário, “os discursos formam sistematicamente os objetos que falam. Certamente os discursos são feitos de signos; mas o que eles fazem é mais que utilizar esses signos para designar coisas. É esse mais que os torna irreduzíveis à língua e ao ato de fala” (VEIGA-NETO, 2011, p. 93).

that wants to be instituted, to be present, to make itself happen (GALLO, 2008, p. 64).⁶

In this sense, this CA is also part of this larger education as it is a public policy, with stipulated strategies that involve the entire educational scenario in the country, since it is also based on the Federal Constitution, thus tending to be concretized in the Law of Guidelines and Bases for National Education (LDB), a document that governs the country's educational norms.

The purpose of Amendment no. 95/20016

The CA enacted on December 15, 2016 proposes a ceiling on its NTR. This ceiling is a limit on Union spending on investments in the health and education sectors for twenty years, scheduled until the year 2037, is described in the Federal Constitution in articles 106 to 114, we will highlight here some of these articles:

Art. 110. Under the New Tax Regime, the minimum investments in public health actions and services and in maintenance and development of education will be equivalent to:

I - in 2017, to the minimum investments calculated under the terms of item I of § 2 of art. 198 and the *caput* of art. 212, of the Federal Constitution;

II - in subsequent years, to the amounts calculated for the minimum investments of the immediately previous year, corrected in the manner established by item II of § 1 of art. 107 of this Transitional Constitutional Provisions Act (BRASIL, 2016).⁷

Article 198 of the Federal Constitution refers to Section II of Health, in which it addresses the guidelines that make up the Unified Health System, in addition to Article 212 mentions the percentage of investment in education. About this legislation in the educational field, we have that:

Art. 212. The Federal Government will apply, annually, no less than eighteen, and the States, the Federal District and the Municipalities twenty-five percent,

⁶ A educação maior é aquela dos planos decenais e das políticas públicas de educação, dos parâmetros e das diretrizes, aquela da constituição e da Lei de Diretrizes e Bases da Educação Nacional, pensada e produzida pelas cabeças bem pensantes a serviço do poder. A educação maior é aquela instituída e que quer instituir-se, fazer-se presente, fazer-se acontecer (GALLO, 2008, p. 64).

⁷ Art. 110. Na vigência do Novo Regime Fiscal, as aplicações mínimas em ações e serviços públicos de saúde e em manutenção e desenvolvimento do ensino equivalerão:

I - no exercício de 2017, às aplicações mínimas calculadas nos termos do inciso I do § 2º do art. 198 e do *caput* do art. 212, da Constituição Federal;

II - nos exercícios posteriores, aos valores calculados para as aplicações mínimas do exercício imediatamente anterior, corrigidos na forma estabelecida pelo inciso II do § 1º do art. 107 deste Ato das Disposições Constitucionais Transitórias (BRASIL, 2016).

at least, of the revenue resulting from taxes, including that derived from transfers, in the maintenance and development teaching (BRASIL, 2016).⁸

However, Article 111 of the CA presents a greater limitation in relation to investments in education, by defining that the Union, when allocating resources to this area, must refer to the previous year. Such calculation should only change annually in combination with the accumulated inflation according to the Extended National Consumer Price Index (IPCA), in which the tax revenue could only be counted eighteen percent.

Art. 111. From the financial year of 2018, until the last fiscal year of the New Tax Regime, the approval and execution provided for in §§ 9 and 11 of art. 166 of the Federal Constitution will correspond to the mandatory execution amount for the 2017 fiscal year, corrected in the manner established by item II of § 1 of art. 107 of this Transitional Constitutional Provisions Act (BRASIL, 2016).⁹

For twenty years, as the proposal reports, public “expenses” will only have their inflationary corrections adjusted, thus, there will be no real increases in these sectors of paramount importance, prioritizing the payment of public debt and leaving Education and Health as secondary. In this discursive game of values, there is a dispute between the neoliberal political field and the field of education formations when investigating the presence of discourses that mark conceptions about this act. When searching in this CA the lexical items "expense" and "investment", only the first one is found. This fact demonstrates the strength of the neoliberal discourse in the public political sphere that governs current education in the country. Education is seen as a commodity, as an object of trade, because it has expenses. The political field silences the discourse of Education as a broad investment in the subjects' lives, aiming at them, constituting the subject as an object as well.

According to Silva and Bittencurt (2017), the CA can be interpreted by two currents: the first defends the idea of the search for the salvation of public accounts, of external debt in order to cover deficits, and that when fixing investments, the country will achieve a financial balance; the second, on the other hand, presents the idea that CA tends to strengthen the limits for spending on public and social policies and, thus, can harm the less favored classes by putting the right, access and permanence in education at risk. However, for these authors, neither the

⁸ Art. 212. A União aplicará, anualmente, nunca menos de dezoito, e os Estados, o Distrito Federal e os Municípios vinte e cinco por cento, no mínimo, da receita resultante de impostos, compreendida a proveniente de transferências, na manutenção e desenvolvimento do ensino (BRASIL, 2016).

⁹ Art. 111. A partir do exercício financeiro de 2018, até o último exercício de vigência do Novo Regime Fiscal, a aprovação e a execução previstas nos §§ 9º e 11 do art. 166 da Constituição Federal corresponderão ao montante de execução obrigatória para o exercício de 2017, corrigido na forma estabelecida pelo inciso II do § 1º do art. 107 deste Ato das Disposições Constitucionais Transitórias (BRASIL, 2016).

current in favor nor the current against are adequate. They argue that both the Executive and the Legislative can propose additions to investments when necessary, as the document is not as rigorous, and the Executive has the power to create provisional measures according to needs.

In this same context, another point that can be debated is the lexical item “extrapolation”. Since the political powers can intervene in urgent situations, what is considered to be extrapolation varies and the limits become more subjective, being up to the political-ideological valuation.

Thus, this CA makes it clear that the freeze on social spending refers to the payment of State debts, a fact that reduces investments with affirmative action policies and public policies aimed at repairing damage to vulnerable groups, thus, the State modifies their role in acting with austerity on the population.

Governmentality and the Amendment no. 95/2016

Foucault (2008), in the work "Security, Territory and Population", highlights the concept of "governing" structured in a triad: Sovereignty, Discipline and Government management. The first refers to the monarchical period, and was related to the regime of an art of governing the king through the laws and also a normalization, in which the territory was the target. The second takes up the modern period in which individuals' bodies were inserted in an individualization process, through discipline. And the last term refers to the contemporary period, in which the question of security is exercised over a group of the population, which becomes the object and subject of a security mechanism that is exercised when controlling it through knowledge developed by science in the modern period. In this way, the concept of governmentality concerns a technology of government, a power over individuals, associated with the appearance of populations as a political problem that aims at a control over bodies in social dynamics under the aspect of a "biopolitics".

On the other hand, Foucault emphasizes that the sovereign and disciplinary character is not extinguished in contemporary times. These still produce obedient and docile bodies, inserted in a relationship of power over life (which characterizes biopower), and represent the way in which bodies are managed by the social structure. This population management is formulated by biopolitics, a force that regulates the population and the bodies in multitude. This measure of freezing investments through public policies makes a conception of biopolitics, as the CA produces this regulatory effect on the subjects.

Prado Filho (2006), in “The history of governmentality”, portrays the historical process of such a concept and defines it by the concept of government. According to the author, the idea of government is not restricted to State policy, but rather a government mechanism that influences the conduct of individuals. In this sense, the government “focuses on individual and collective bodies regulating, marking, normalizing and individualizing: it induces subjectivity effects; it concerns the lives of individuals” (PRADO FILHO, 2006, p. 19). Governmentality proposes to question the way in which the subject is conducted in:

[...] a set of strategies and procedures of power emerging in the 17th and 18th centuries, which targets individuals and populations, using health and safety devices and relying on political economy as the predominant form of knowledge, tending to multiply a series of devices and specific knowledge related to government practices (PRADO FILHO, 2006, p. 42).¹⁰

The term “to govern” has a broad meaning, an action to manage something. That is why, in the Foucaultian perspective, neither a State nor a territory is governed, what is governed are the subjects. Thus, “governing” in a moral sense represents “leading someone” and also “imposing a regime”, imposing a regime on a patient: the doctor rules the patient, or the patient who imposes a certain number of care rules himself” (FOUCAULT, 2008, p. 163).

Governmentality, in this way, consists of an act of governing as a technology, in order to regulate the life of the population. In this context, the CA also governs, as it leads the subjects to live in the face of a limitation imposed by the amendment itself.

Veiga-Neto (2010), in the article *Gubernamentalidad Neoliberal: implicaciones para la educación*, reports on the shift from the emphasis of sovereignty over the territory to the emphasis on sovereignty over the population, in which the art of governing was no longer restricted in the figure of sovereign, but on the State, in which it became concerned with the regulation of the population through public policies. In this way, the State is problematized and no longer the ruler, king-sovereign. According to Veiga-Neto (2010):

Es a partir de estas constataciones que Foucault propone el concepto de *gubernamentalidad*, que hace referencia tanto a una razón o táctica de gobierno, una racionalidade governamental que descubre la economía, e que hace de la población su principal objetivo, como “al contacto entre las tecnologías de dominación de los otros y las [tecnologías] dirigidas a la [dominación] del yo (p. 215).

¹⁰ [...] um conjunto de estratégias e procedimentos de poder emergentes nos séculos XVII e XVIII, que toma como alvo os indivíduos e as populações, utilizando-se de dispositivos de saúde e segurança e apoiando-se na economia política como forma predominante de conhecimento, tendendo a multiplicar uma série de aparelhos e saberes específicos relativos às práticas de governo (PRADO FILHO, 2006, p. 42).

Governmentality constitutes this rationality of the State that aims to regulate the population through a security mechanism, which configures knowledge such as statistics, demography, economics, among others, knowledge that involves a power, an action of biopower over the population. Through the power exercised by the State, it finds itself dissatisfied in relation to too much rationality in which the very reason of State is questioned and, thus, it appears:

[...] una crítica que descubre que gobernar demás es irracional, pues es antieconómico y frustrante; una crítica que se manifiesta como un horror al Estado. Así, en la perspectiva de Foucault el liberalismo es menos una fase histórica, una filosofía política o un sistema económico, y mas un refinamiento de arte de gobernar, en el que el gobierno, para ser más económico, se convierte em más delicado y sutil, de modo que, para “gobernar más es necesario gobernar menos” (VEIGA-NETO, 2010, p. 218).

The school institution in modern times aims at a fabrication of the subject, however, the Foucauldian perspective tends to break with this ideal in the proposition of a subject capable of self-government, in a struggle and resistance in the face of the subjectification process.

Liberalism tries to reconcile this governmentalization of the state with economic freedom, with the very freedom of individuals. He deals with “del gobierno de la sociedad; una sociedad formada por sujetos que son, cada uno y al mismo tempo, objeto (gobernado desde fuera) y socio (sujeto auto-gobernado) del gobierno” (VEIGA-NETO, 2010, p. 218).

The author also comments that neoliberalism presents a new configuration of liberalism, but does not act as an enemy of the State, as it does not have its function diminished, what differentiates are the new forms of knowledge and competencies that help to expand the advanced forms of capitalism. In this sense, the State follows a business logic inserted in this macroeconomy. On the other hand, neoliberalism characterized by the minimal presence of the State contributes to the constitution of a subject that is no longer manufactured, but more manipulable, inserted in a business logic and given this:

[...] o se privatizan las actividades estatales (lucrativas) o se someten ou se privatizam as atividades estatais (lucrativas), ou se submetem a las actividades (no lucrativas) a la lógica empresarial. Es por eso que los discursos neoliberales insisten en afirmar que el Estado sólo de debe ocupar de algunas actividades “esenciales” como la educación, y la salud; e incluso así encargándose de, como máximo, regularlas (VEIGA-NETO, 2010, p. 224).

In this way, CA is structured in the midst of a financial logic in freezing educational investments. This control is immersed in the macropolitics of larger education. The author also emphasizes the presence of a minor education, which constitutes a micropolitics that can be

constituted by daily actions of resistance to the control and regulation of the larger education and thus:

Any struggle is always resistance within the power network itself, a web that spreads throughout society and that no one can escape: it is always present and is exercised as a multiplicity of relations of forces. And as where there is power, there is resistance, there is not a exact place of resistance, but moving and transitory points that are also distributed throughout the social structure (FOUCAULT, 2013, p. 18).¹¹

Resistance is present in power relations, and these moving points constitute a minor education compared to the larger education that acts in its discursive practice, in this case minor education would be inserted in a non-discursive practice. Therefore, minor education aims at producing difference, and "if all education is a political act, in the case of minor education, this is even more evident, as it is an enterprise of revolt and resistance" (GALLO, 2008, p. 67). Such a possibility produces a possible problematization about larger education that standardizes the CA discourse.

Gallo (2012) uses the term "democratic governmentality" when contextualizing Brazil since the emergence of the Federal Constitution, in the process of redemocratization, inserted in an intensification of the production of public policies in the country, he affirms that through educational laws the subject passes to be a target of the government and with the creation of the CA it appears that the subjects also become the target of the government, which aims at a neoliberal policy.

The author also problematizes the term "citizenship" in the Constitution, which has as its principle the formation of a democratically governed citizen, and questions whether the concept itself guarantees the authenticity of the right explained in the document. In this discourse, to be governed is to participate in government acts, as well as a subjection in the process of subjectification integrated in this governmentality.

Final considerations

The conditions of discourse production are also related to the relations of power and place occupied by the subject of the discourse and by the interlocutors, which leads one to

¹¹ Qualquer luta é sempre resistência dentro da própria rede de poder, teia que se alastra por toda a sociedade e a que ninguém pode escapar: ele está sempre presente e se exerce como uma multiplicidade de relações de forças. E como onde há poder, há resistência, não existe propriamente o lugar da resistência, mas pontos móveis e transitórios que também se distribuem por toda a estrutura social (FOUCAULT, 2013, p. 18).

believe that the strength of the speech of a speaker is defined by his social position. The political discourse of the CA thus marks certain ways of conceiving subjects and dialogues with certain types of ideological construction. However, power always has an opening for resistance in itself, since the notion of power in Foucault's perspective is always exercised by subjects. There is a constant ideological dispute for the realization of power, influencing the subjects in their constitution processes, inserted in a governmentality, in the most diverse historical times.

The configuration of the State in opening up to the financial market characterizes neoliberal policy. And school institutions inherit these precepts in compliance with the rules. An example is the partnership with publishers, which produce a wide range of textbooks for schools. Thus, there are many investments in the educational sphere, and the State, with its neoliberal view, would need to emphasize actions for a better distribution of spending on education.

Thinking about the CA and its consequences on education involves an assessment of its effectiveness to be carried out every three years. The analysis of the CA during this period would imply listening to the “governed” subjects themselves in the school context. When managing these resources invested in health and education, an improvement in financial management in these areas should be prioritized. It is considered that the problem in both sectors is not the lack of resources, but an adequate and viable management that supplies the subjects' rights in the areas of health and education.

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How to quote this article

SILVA, Silvia Cristina Barbosa da; OLIVEIRA, Paula Ramos de. O discurso da Emenda Constitucional n. 95/2016 no contexto da governamentalidade neoliberal. **Revista on line de Política e Gestão Educacional**, Araraquara, v. 24, n. 1, p. 154-163, jan./abr., 2020. e-ISSN:1519-9029. DOI: <https://doi.org/10.22633/rpge.v24i1.13189>

Submitted: 27/10/2019

Required revisions: 18/11/2019

Approved: 28/12/2019

Published: 06/01/2020